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# Vol. I

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1931

## No. 430

SPENCER KELLOGG & SONS, INC., AS OWNER OF THE MOTORBOAT "LINSEED KING," ETC., PETITIONER,

*vs.*

HILDA M. HICKS, AS ADMINISTRATRIX, ETC., ET AL.

## No. 444

VERA ALEXANDER, ADMINISTRATRIX OF THE ESTATE OF JAMES ALEXANDER, DECEASED, ET AL., PETITIONERS,

*vs.*

SPENCER KELLOGG & SONS, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 2, OCTOBER 7, 1931

CERTIORARI GRANTED NOVEMBER 23, 1931

**(36,244, 36,258)**

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# United States District Court

SOUTHERN DISTRICT OF NEW YORK.

| | |
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| In the Matter of The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. | A. 94/237. |

## Statement.

1927

March 4—Filed Petition.
5—Filed Order for Ad Interim Stipulation.
—Filed Affidavit of Appraisal and Value.
—Filed Affidavit of Appraisal and Value.
—Filed Order Appointing Commissioner to Receive Proof of Claims and Directing Issuance of Monition and Enjoining Suits.
—Filed Restraining Order.
—Filed Order of Reference of Appraisal and Monition.

May 16—Filed Answer.
6—Filed Claim of Vera Alexander, as administratrix, etc.
—Filed Claim of John Darco (Dominick Darco).
11—Filed Objection to Claim.

*Statement.*

1928

March 17—Filed Opinion of Judge Hazel, dated March 15, 1928, denying limitation of liability, etc.

27—Filed Interlocutory Decree.

1930

July 9—Filed Commissioner's Report.

22—Filed Claimants' Exceptions to the Report of the Commissioner.

23—Filed Petitioner's Exceptions to the Report of the Special Commissioner.

25—Filed Petitioner's Supplemental Exceptions.

Dec. 17—Filed Opinion by Judge Patterson, dated December 17, 1930, awarding damages in certain claims and holding that the New Jersey Workmen's Compensation Act is applicable to employees, etc.

1931

Feb. 3—Filed Order to Show Cause and Affidavit for rehearing by petitioner, etc.

9—Filed Memorandum by Judge Patterson, dated February 9, 1931, granting petitioner rehearing but holding that the men who applied for employment prior to the disaster were not governed by the New Jersey Workmen's Compensation Act.

March 26—Filed Order Denying the Motion.

Feb. 16—Filed Findings of Fact and Conclusions of Law.

25—Filed Final Decree.

Mar. 11—Filed Claimants' Notice of Appeal.

—Filed Claimants' Assignments of Error.

20—Filed Petitioner's Notice of Appeal.

—Filed Petitioner's Assignments of Error.

—Filed Supersedeas Bond.

Apr. 2—Filed Notice of Appeal (Claimant Nora McEachin, as administratrix of the Estate of Henry A. McEachin, deceased).

—Filed Assignments of Error (Claimant Nora McEachin as administratrix of the Estate of Henry A. McEachin, deceased).

## Petition.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The petition of Spencer Kellogg & Sons, Inc., as owner of the Motorboat "Linseed King," her engines, etc., for exemption from or limitation of liability, civil and maritime, alleges upon information and belief as follows:

FIRST.—At all the times hereinafter mentioned, your petitioner, Spencer Kellogg & Sons, Inc., was and still is a corporation, organized and existing under and by virtue of the laws of the State of New York, with an office and place of business at 100 E. 42nd Street, in the Borough of Manhattan, City, County and State of New York, and the owner of

10 *Petition.*

the Motorboat "Linseed King." The Motorboat "Linseed King" is now and during the pendency of process herein will be within this District and within the jurisdiction of the United States and of this Honorable Court.

SECOND.—The Motorboat "Linseed King" is a wooden vessel, 42.5 feet in length, 10 feet in breadth and 4 feet in depth of hold, having a gross tonnage of 10 tons and a net tonnage of 7 tons, and propelled by a gasoline engine. Her official
11 number is 224512, permanent license issued April 15, 1925, License No. 185. At all the times hereinafter mentioned prior to and up to the time of the alleged occurrence she was tight, staunch, strong, fully manned and equipped and in all respects seaworthy.

THIRD.—About 6:20 a. m. December 20, 1926, the "Linseed King," in charge of a licensed and competent operator and captain, left the pier at the foot of 95th Street, North River, having on board about 60 persons, bound for petitioner's
12 plant at Edgewater, New Jersey. There was considerable floating ice in the river, and when the "Linseed King" was well out in the river it was discovered that she was making water. The captain at once ordered those on board to put on life preservers, and proceeded at full speed for shore. The vessel settled by her bow and filled rapidly until she floated awash. Many of those on board jumped or were precipitated into the water, and a large number remained in the cabin and were drowned. Rescue work was hindered by the darkness, but after considerable delay other vessels came to the

assistance of those in the water and many were saved, but it is believed that some were drowned or died from exposure. 13

The number of persons permitted to embark was considerably less than the capacity of the vessel. Life preservers were provided for more than 80. The vessel and all its equipment was in first class condition.

FOURTH.—The aforesaid disaster and any damage consequent thereon were not caused or contributed to by any fault or neglect on the part of the Motorboat "Linseed King" or those in charge thereof, the petitioner herein, or anyone for whom petitioner may be responsible, but were due solely to fortuitous contact with submerged or floating obstacle, timber, ice, or other object, without negligence on the part of the owner or operator of the Motorboat "Linseed King," or to Act of God, and circumstances over which the owners of the Motorboat "Linseed King," and those in charge thereof, had no control and for which they are not responsible. 14 15

FIFTH.—The aforesaid disaster and any loss, damage or injury consequent thereon were caused without fault upon the part of the petitioner and without its privity or knowledge.

SIXTH.—Many suits have been filed in courts of several jurisdictions against petitioner claiming damages for loss of life, personal effects, personal injuries, exposure, etc., and it is anticipated that more suits of the same nature will be instituted.

16 *Petition.*

Many claims also have been or will be filed with the New Jersey State Workmen's Compensation Bureau for compensation for death or injuries, etc., arising out of the disaster herein described. A list of suits now pending and claims filed to the date hereof is appended and marked Schedule A. The amount of such suits and claims will greatly exceed the value of petitioner's interest in said Motorboat "Linseed King."

17 SEVENTH.—Petitioner desires to claim the benefit of the provisions of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and Acts amendatory thereof and supplemental thereto, and in this proceeding, by reason of the facts and circumstances hereinbefore set forth, petitioner further desires to contest its liability and the liability of the Motorboat "Linseed King" to any extent whatever for any loss, destruction, damage and injury caused by and resulting from the disaster aforesaid, except as set out in paragraph "5" of the prayer of this petition and except that petitioner does not contest the right of any claim-
18 ant to file his claim with the New Jersey State Workmen's Compensation Bureau.

EIGHTH.—The value of the Motorboat "Linseed King" at the time of the said occurrence did not exceed the sum of $1,500.00. There was no pending freight at the time of the alleged occurrence. The entire value of the interest of your petitioner in the said Motorboat "Linseed King" at the end of the voyage on which the disaster took place does not exceed the sum of $1,500.00.

NINTH.—All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, petitioner prays:

1. That this Court will cause due appraisement to be made of the amount or value of petitioner's interest in the said Motorboat "Linseed King" and her pending freight, on the voyage aforesaid upon a reference to be ordered herein.

2. That the Court make an order directing petitioner to file its stipulation with surety to be approved by the Court for the payment in due course of the amount of the petitioner's said interest, or such part thereof as may be necessary and proper, whenever the Court shall so order.

3. That the Court make an order directing the issuance of a monition to all persons claiming damages for all and any loss, damage or injury sustained as a result of the sinking of Motorboat "Linseed King" upon the voyage described in the Third Article of this petition, citing them to appear before a Commissioner to be named by the Court in said order, and to make due proof of their respective claims and also to appear and answer the allegations of this petition according to law and the practice of this Court, at or before a set time to be fixed by the Court.

4. That the Court on filing of such stipulation as may be determined to be proper, or on the filing of an ad interim stipulation, will issue its injunction restraining the prosecution and determination

of all actions, suits and proceedings already begun to recover for damages sustained on the voyage aforesaid, and the commencement or prosecution or determination hereafter of any suit, action or legal proceeding of any nature or description whatsoever, except in the present proceeding against the petition or against the Motorboat "Linseed King" or her pending freight in respect of any claim or claims arising out of the aforesaid voyage, with liberty, however, to any claimant to file his claim with the New Jersey State Workmen's Compensation Bureau.

5. That the Court in this proceeding adjudge that the petitioner is not liable to any extent for any loss, damage or injury, nor for any claim whatsoever in any way arising out of or in consequence of the aforesaid voyage, except such claims, if any, as shall be proper and legal claims under the New Jersey Workmen's Compensation Law. If there shall be any proper and legal claims under the New Jersey Workmen's Compensation Law, and/or if the petitioner shall be adjudged liable for any other claims of any nature whatsoever, then the petitioner prays that its liability for any such proper and legal claims under the New Jersey Workmen's Compensation Law and its liability for any and all other claims or awards of any nature arising out of the disaster hereinabove described, be limited to the amount or value of the petitioner's interest in the Motorboat "Linseed King" at the end of the voyage on which she was engaged at the time of the said accident or loss and her pending freight and that the money paid or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove

their claims before the Commissioner hereinabove referred to, saving to all parties any priorities to which they may be legally entitled and that a decree may be entered discharging the petitioner from all further liability.

6. That the petitioner may have such other or further relief as the Justice of the cause may require.

BIGHAM, ENGLAR & JONES,
Proctors for Petitioner,
Office & P. O. Address,
No. 64 Wall Street,
New York City.

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State of New York, } ss.:
County of Erie, }

JAMES H. MATTHEWS, being duly sworn, deposes and says:

That he is Vice President of Spencer Kellogg & Sons, Inc., petitioner herein; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

That the reason this verification is made by deponent and not by petitioner is that petitioner is a corporation.

JAMES H. MATTHEWS,
Vice Pres.

Sworn to before me this
28th day of February, 1927.

H. J. ALDRICH,
Notary Public.
(Notarial Seal)

## Schedule "A."

SUITS NOW PENDING IN THE SUPREME COURT, STATE OF NEW YORK, NEW YORK COUNTY.

| *Plaintiff* | *Amount Claimed* |
|---|---|
| Annie Murphy, as Administratrix of the goods, etc., of Andrew S. Murphy | $ 100,000 |
| Felipe Duarte | 25,000 |
| Margarita De Meza, Administratrix of Domingo De Meza | 100,000 |
| Raymond Boyer, Administrator of Ernest Boyer | 100,000 |
| Francisca Gomes Castro and Joes Reyes, Administrators of John Castro | 100,000 |
| Nils Ramsland, Administrator of Bert Ramsland | 100,000 |
| Fred Ludwig | Unknown |
| Lena Burns, Administratrix of Charles D. Burns | 100,000 |
| Annabell Wisdom, Administratrix of Nathaniel Wisdom | 100,000 |
| Harry Gold | Unknown |
| Dominick Darco | 5,000 |
| Helen Roberts, Administratrix of Alfred Roberts | Unknown |
| Laura Rawlins, Administratrix of Clifford Rawlins | 75,000 |
| Nora McEachin, Administratrix of Henry A. McEachin | Unknown |
| Sadie Varouxaki, Administratrix of Manual Antones Varouxaki | Unknown |
| Geneva Sims, Administratrix of George Sims | Unknown |
| Leola Turner, Administratrix of John Turner | Unknown |

*Schedule "A"—Annexed to Petition.* 31

| *Plaintiff* | *Amount Claimed* |
|---|---|
| Virginia Sumner, Administratrix of Fred Sumner | Unknown |
| Padro Mitchell | Unknown |
| Carl Bremer | Unknown |
| Mary J. Martin, Administratrix of Eric Martin | Unknown |
| Millicent Ifill, Administratrix of McBean Ifill | 100,000 |
| Margaret Hartman, Administratrix of John Hartman | Unknown |
| James P. Campbell | Unknown |
| Mamie Jackson, Administratrix of Harry Jackson | Unknown |
| Mary Johnson, Administratrix of Arthur Johnson | Unknown |
| Violet Forde, Administratrix of Samuel Griffith | Unknown |
| Clementine Mathias, Administratrix of Adolphus Mathias | 100,000 |

32

LIBEL IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. 33

| *Plaintiff* | *Amount Claimed* |
|---|---|
| Emma Gonzales Navas, as Administratrix, etc., of Marcos Gonzales Navas | $25,000 |

In addition to the suits listed above, claims have been made by or on behalf of the following named persons, but no legal proceedings have as yet been instituted:

Mrs. J. Heap, as personal representative of James Heap, deceased.

34 *Schedule "A"—Annexed to Petition.*

Charles P. Bostrom, claim for personal injuries.
Luis Ortiz, claim for personal injuries.
Frank Rockwood, claim for personal injuries.
Edmund Vizcay, as personal representative of Joseph Claudius Vizcay.
Kenneth Norgrove, claim for personal injuries.
John Sullivan, claim for personal injuries.
William Ice, claim for personal injuries.
Darnley Barker, claim for personal injuries.
Stephen Memetz, as personal representative of
35 George Memetz, deceased.

Claim has also been made by the Consul General of Chile on behalf of Luis Herrera, Juan Fernandez, Jorge Venega, Carlos Morales and Fernando Martin, all claimed to be deceased.

36

## Order for Ad Interim Stipulation. 37

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 5th day of March, 1927.

Present—Hon. AUGUSTUS N. HAND, District Judge.

In the Matter 38

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

Spencer Kellogg & Sons, Inc., having filed a petition for the Limitation of Petitioner's Liability as sole owners of the Motorboat "Linseed King" and 39 having prayed for an appraisal of the value of the petitioner's interest in said vessel and her pending freight, if any, and for leave to file a stipulation for the amount of such appraised value or an ad interim stipulation pending the appraisal of the petitioner's interest in said vessel and her pending freight, if any, by a Commissioner to be appointed by this Court and it appearing from the affidavit of Robert S. Haight, executed the 23rd day of December, 1926, and the affidavit of Fred

40 *Order for Ad Interim Stipulation.*

R. Allen, executed the 22nd day of December, 1926, and filed herewith, that the value of said vessel and her equipment as of December 20th, 1926, is not exceeding $1,500 and it appearing from the petition of Spencer Kellogg & Sons, Inc., verified on the 28th day of February, 1927, and filed on March 4th, 1927, that there was no freight pending on said vessel at the termination of the voyage on which she was engaged at the time of the disaster mentioned in the petition filed herein,

41 Now, on motion of Bigham, Englar & Jones, proctors for the petitioner, it is

Ordered that the petitioner file herein an ad interim stipulation for the value of said vessel and its equipment and pending freight in the sum of $1,500 with interest from the 20th day of December, 1926, the date of the termination of the voyage on which the collision occurred with surety according to the rules and practice of this Court, and it is further

42 Ordered that any party may apply to have the amount of the stipulation increased or diminished as the case may be on the filing of the report of the Commissioner appointed to appraise the amount of value of the petitioner's interest in said vessel and her pending freight, if any, or on the ultimate determination of the Court on exceptions to the Commissioner's report.

Augustus N. Hand,
U. S. D. J.

## Affidavit of Appraisal and Value.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

State of New York, County of New York, } ss.:

ROBERT S. HAIGHT, being duly sworn, deposes and says:

That he is a Ship Engineer, Surveyor and Appraiser; that he has been in the said business in the City of New York upwards of 18 years, and knows the values of vessels of the class of the Motorboat "Linseed King"; that he knows the value of similar vessels on or about the 20th day of December, 1926, and that he knows the value of the said Motorboat "Linseed King," her engines, etc., as of the said date. That he examined the Motorboat "Linseed King" at the time of her being raised subsequent to the disaster of December 20th, 1926. That the actual value of the said Motorboat "Linseed King" immediately subsequent to the disaster, which occurred on December 20th, 1926, in de-

46 *Affidavit of Appraisal and Value.*

ponent's opinion was not exceeding the sum of $1,500.00.

R. S. HAIGHT.

Sworn to before me this
23rd day of December, 1926.

EDWARD A. QUINLAN,
(Seal) Notary Public.
Kings County No. 2.
47 Kings County Register's No. 8002.
New York Co. Clk's No. 6, Reg. No. 8007.
Queens County Clerk's No. 149.
Commission expires March 30, 1928.

48

## Affidavit of Appraisal and Value.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

State of New York, County of New York, } ss.:

FRED R. ALLEN, being duly sworn, deposes and says:

That he is a Ship Repairer and Builder and that he has been in the said business in the City of New York upwards of twelve years, and knows the values of vessels of the class of the Motorboat "Linseed King"; that he knows the value of similar vessels on or about the 20th day of December, 1926, and that he knows the value of the said Motorboat "Linseed King," her engines, etc., as of the said date. That he examined the Motorboat "Linseed King" at the time of her being raised subsequent to the disaster of December 20th, 1926. That the actual value of the said Motorboat "Linseed King" immediately subsequent to the disaster which oc-

52 *Affidavit of Appraisal and Value.*

curred on December 20th, 1926, in deponent's opinion was not exceeding the sum of $1,000.00.

FRED R. ALLEN.

Sworn to before me this
22nd day of December, 1926.

HENRY J. BOGATKO,
(Seal) Notary Public.
New York County No. 667, Reg. No. 7673.
53 Certificate filed in Kings County.
Kings County Clerk's No. 85, Register's No. 7390.
Commission expires March 30, 1927.

54

**Order Appointing Commissioner to Receive Proof of Claims and Directing Issuance of Monition and Enjoining Suits.** 55

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 5th day of March, 1927.

Present—Hon. AUGUSTUS N. HAND, District Judge. 56

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

57

A petition having been filed herein on the 4th day of March, 1927, by Spencer Kellogg & Sons, Inc., as sole owner of the Motorboat "Linseed King," her engines, etc., claiming the benefit of the Limitation of Liability provided for in the third and fourth sections of the Act of Congress entitled "An Act to limit the liability of shipowners and for other purposes," passed March 3rd, 1851, and now embodied in Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the statutes amendatory thereof and supplemental thereto, and also contesting the liability independently of the

58 *Order Appointing Commissioner to Receive Proof of Claims and Directing Issuance of Monition and Enjoining Suits.*

Limitation of Liability claimed under such acts for any loss, damage, injury or destruction, resulting from sinking of Motorboat "Linseed King" on December 20th, 1926, while engaged in carrying persons from the foot of 95th Street, North River, Manhattan, to Edgewater, N. J. or out of any other matter connected with the voyage on which the said Motorboat "Linseed King" was then engaged, and
59 said petition also stating the facts and circumstances on which such exemption from and limitation of liability are claimed and on reading the affidavits of the value of the said vessel and her equipment executed the 22nd and 23rd days of December, 1926, and filed herein on March 4th, 1927, and the ad interim stipulation for value executed on January 5th, 1927, by Indemnity Insurance Company of North America, in the sum of $1,500.00, with interest from December 20th, 1926, and filed herein on March 4th, 1927, undertaking to pay into the Court within ten days after the entry of an order confirming the report of the Commissioner to be
60 appointed to appraise the amount or value of the petitioner's interest in said Motorboat "Linseed King" and her pending freight, if any, the amount or value of such interest as thus ascertained or to file in this proceeding a bond or stipulation for value in the usual sum with surety in said amount and that pending the payment into Court of the amount or value of the petitioner's interest in the said Motorboat "Linseed King," her engines, etc., or her pending freight, if any, or the giving of a stipulation for value thereof, the said bond shall stand as security for all claims in said limitation proceedings.

*Order Appointing Commissioner to Receive Proof of Claims and Directing Issuance of Monition and Enjoining Suits.* 61

Now on motion of Bigna.n, Englar & Jones, proctors for the petitioner, it is

ORDERED that a monition issue out of and under the seal of this Court against all persons claiming damage, if any, and all losses, damages or injuries occasioned by or resulting from sinking of Motorboat "Linseed King" on December 20th, 1926, while engaged in carrying passengers from the foot of 62
95th Street, North River, Manhattan, to Edgewater, N. J., as alleged in the petition herein, or out of any other matter connected with the voyage on which the Motorboat "Linseed King" was then engaged citing them to appear before this Court and make due proof of their respective claims on or before the 12th day of April, 1927, at 10:30 o'clock in the forenoon, and George V. A. McCloskey, Esq., is hereby appointed the Commissioner before whom all claims which shall be presented in pursuance of said monition shall be made, subject to the rights of any person to controvert or question the same with liberty to any person or persons claiming dam- 63
ages as aforesaid, who shall have presented his or their claims to said Commissioner under oath to answer said petition, and it is further

ORDERED that public notice of such monition be given by publication thereof in the New York Evening Post, in accordance with the Rules of this Court, once each week until the return of such monition and that not later than the day of the second publication of said monition, the petitioner shall mail a copy thereof to each person known to

64 *Order Appointing Commissioner to Receive Proof of Claims and Directing Issuance of Monition and Enjoining Suits.*

have or to assert any claim against the said vessel or the petitioner and to their proctor or attorney, if known, and it is further

ORDERED that the beginning or prosecution or determination of any and all claims, suits, actions or legal proceedings of any nature or description whatsoever except in the above entitled proceeding
65 in respect of any claim arising or resulting from sinking of Motorboat "Linseed King" on December 20th, 1926, while engaged in carrying persons from the foot of 95th Street, North River, Manhattan, to Edgewater, N. J., or out of any other matter connected with the voyage on which the said Motorboat "Linseed King" was then engaged, be, and they hereby are, stayed and restrained until the hearing and determination of this proceeding, with liberty, however, to any claimant to file his claim with the New Jersey State Workmen's Compensation Bureau, and it is further

66 ORDERED that service of this order as a restraining order be made within this district in the usual manner and in any other district by the United States Marshal for such district by delivering a certified copy of this order to the person or persons to be restrained or to his or their proctors or attorneys, and to the New Jersey State Workmen's Compensation Bureau by delivering a certified copy of this order to the Secretary of said New Jersey State Workmen's Compensation Bureau.

AUGUSTUS N. HAND,
U. S. D. J.

## Restraining Order.

67

At a Stated Term of the United States District Court held in and for the Southern District of New York at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 5th day of March, 1927.

Present—Hon. AUGUSTUS N. HAND, District Judge.

68

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

69

A petition having been filed herein on the 4th day of March, 1927, by the above named petitioner as sole owner of the Motorboat "Linseed King," her engines, etc., for exemption from and limitation of liability in respect of any claims arising out of or connected with the matters set forth in said petition, and it appearing from the affidavits duly filed herein that the value of said vessel in her condition immediately after the occurrence aforesaid did not exceed the sum of $1,500.00 and that there was no pending freight or passage money, and an ad interim stipulation in the sum of $1,500.00 with good and sufficient surety having been filed herein on

70 *Restraining Order.*

behalf of the petitioner to cover the amount of the value of the petitioner's interest in said vessel and her pending freight until due appraisal thereof,

Now, on motion of Bigham, Englar & Jones, proctors for the petitioner, it is

ORDERED, that the further prosecution of the following described actions:

71 SUPREME COURT,

NEW YORK COUNTY.

Annie Murphy, as Administratrix of the goods, etc., of Andrew S. Murphy, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Felipe Duarte, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Margarita de Meza, Administratrix of Domingo de Meza, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Raymond Boyer, Administrator of Ernest Boyer, plaintiff, v. Spencer Kellogg & Sons, Inc., de-
72 fendant;

Francisca Gomes Castro and Jose Reyes, Administrators of John Castro, plaintiff v. Spencer Kellogg & Sons, Inc., defendant;

Nils Ramsland, Administrator of Bert Ramsland, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Fred Ludwig, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Lena Burns, Administratrix of Charles D. Burns, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Annabell Wisdom, Administratrix of Nathaniel Wisdom, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Harry Gold, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Dominick Darco, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Helen Roberts, Administratrix of Alfred Roberts, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Laura Rawlins, Administratrix of Clifford Rawlins, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant; 74

Nora McEachin, Administratrix of Henry A. McEachin, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Sadie Varouxaki, Administratrix of Manual Antones Varouxaki, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Geneva Sims, Administratrix of George Sims, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Leola Turner, Administratrix of John Turner, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant; 75

Virginia Sumner, Administratrix of Fred Sumner, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Padro Mitchell, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Carl Bremer, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Mary J. Martin, Administratrix of Eric Martin, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant.

76 *Restraining Order.*

Millicent Ifill, Administratrix of McBean Ifill, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Margaret Hartman, Administratrix of John Hartman, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

James P. Campbell, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Mamie Jackson, Administratrix of Harry Jackson, plaintiff, v. Spencer Kellogg & Sons, Inc., de-
77 fendant;

Mary Johnson, Administratrix of Arthur Johnson, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Violet Forde, Administratrix of Samuel Griffith, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant;

Clementine Mathias, Administratrix of Adolphus Mathias, plaintiff, v. Spencer Kellogg & Sons, Inc., defendant.

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78 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Emma Gonzales Navas, as Administratrix, etc., of Marcos Gonzales Navas, libellant, v. Spencer Kellogg & Sons, Inc., respondent;

and the beginning or prosecution or determination of any and all claims, suits, actions or legal proceedings of any nature or description whatsoever, except in the above entitled proceeding, in respect of any claim arising or resulting from the sinking of Motorboat "Linseed King" on December 20th,

1926, while engaged in carrying persons from the foot of 95th Street, North River, Manhattan, to Edgewater, New Jersey, or out of any other matter connected with the voyage on which the said Motorboat "Linseed King" was then engaged, be, and they hereby are, stayed and restrained until the hearing and determination of this proceeding, with liberty, however, to any claimant to file his claim with the New Jersey State Workmen's Compensation Bureau, and it is further

80

ORDERED, that service of this order as a restraining order be made within this district in the usual manner and in any other district by delivering a certified copy of this order to the person or persons to be restrained, or to his or their proctors or attorneys and to the New Jersey State Workmen's Compensation Bureau by delivering a certified copy of this order to the Secretary of said New Jersey State Workmen's Compensation Bureau.

AUGUSTUS N. HAND,
U. S. D. J.

81

82 **Order of Reference for Appraisal.**

At a Special Term of the United States District Court for the Southern District of New York, held in the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 5th day of March, 1927.

Present—Hon. AUGUSTUS N. HAND, District Judge.

83 In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

84 On reading and filing the petition for limitation of liability filed herein by the above named petitioner on the 4th day of March, 1927, and the affidavit of Robert S. Haight, executed December 23rd, 1926, and the affidavit of Fred R. Allen, executed on the 22nd day of December, 1926, as to the value of the Motorboat "Linseed King" as of December 20th, 1926, immediately subsequent to the disaster described in the petition, and the petition of Spencer Kellogg & Sons, Inc., verified on the 28th day of February, 1927, in which it is set forth as to that there was no pending freight, and an ad interim stipulation for value executed by the Indemnity In-

surance Company of North America, on the 5th day of January, 1927.

Now, on motion of Bigham, Englar & Jones, proctors for the petitioner, it is

ORDERED, that it be referred to George V. A. McCloskey, Esq., as Special Commissioner to take proofs and report to the Court with all convenient speed his conclusions as to the amount or value of the petitioner's interest in the said vessel and her pending freight, if any, for the purposes of limitation of liability as of December 20th, 1926, the date on which the said disaster occurred and her voyage terminated, and that the Commissioner present to the Court the proof adduced before him and it is further 86

ORDERED that the amount or value of the petitioner's interest in said vessel and her pending freight, if any, when finally appraised and approved by the Court be paid into the Registry of this Court by the petitioner, to abide the event of this proceeding, or at the option of the petitioner, a stipulation be filed by the petitioner in such appraised amount providing for the payment thereof or any part thereof into Court when and where ordered. 87

AUGUSTUS N. HAND,
U. S. D. J.

88 **Monition.**

The President of the United States of America, to the Marshal of the United States for the Southern District of New York, GREETING.

WHEREAS, a petition was filed in the United States District Court for the Southern District of New York, on the 4th day of March, 1927, by Spencer Kellogg & Sons, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, praying for Limitation of and
89 Exemption from Liability as owner of the Motorboat "Linseed King," occasioned by or resulting from the disaster, which is alleged to have occurred on or about December 20th, 1926, for the reasons mentioned in said petition praying that a monition issue out of the said Court, citing all persons claiming damages for any and all loss, damage or injuries in connection with said alleged disaster or the voyage on which the Motorboat "Linseed King" was then engaged to appear before said Court and make due proof of their respective claims and answer the allegations of the said petition and that if it shall appear that the petitioner is not liable
90 for any such losses, damages, or injuries, it may be so finally decreed by this Court; and

WHEREAS, petitioner has filed in the office of the Clerk of this Court an ad interim stipulation in the sum of $1,500.00, with interest from December 20th, 1926, executed on January 5th, 1927, by the Indemnity Insurance Company of North America undertaking to pay into the Court within ten days after the entry of an order confirming the report of the Commissioner to be appointed to appraise the amount of the petitioner's interest in the said

vessel and her pending freight, if any, the amount or value of said interest as thus ascertained or to file in this proceeding a bond or stipulation in the usual form with surety in said amount and the said Court having directed by an order made and entered on March 4th, 1927, that a monition issue against all persons claiming damages or any losses, damages or injuries occasioned as aforesaid, citing them to appear before this Court and make due proof of their respective claims on or before the 12th day of April, 1927, at 10:30 o'clock in the forenoon and George V. A. McCloskey, Esq., having been appointed Commissioner before whom proof shall be made of all claims which shall be presented in pursuance of this monition.

YOU ARE THEREFORE COMMANDED to cite all persons claiming damages for any loss, damage or injury or destruction occasioned by said alleged disaster or in connection with the voyage on which the Motorboat "Linseed King" was then engaged to appear before said Court and make due proof of their respective claims before said George V. A. McCloskey, Esq., Commissioner, at his office, No. ....., Borough of Manhattan, City of New York, on or before the 12th day of April, 1927, at 10:30 o'clock in the forenoon and you are also commanded to cite such claimants to appear and answer the petition herein on or before the said last named date or within such further time as such Court may grant and to have and receive such relief as may be due.

And what you have done in the premises do you then make return to this Court with this return.

94 *Monition.*

WITNESS, Honorable Augustus N. Hand, Judge of the District Court of the United States for the Southern District of New York, the 5th day of March, in the year One Thousand Nine Hundred and Twenty-seven, and of the Independence of the United States the One Hundred and Fifty-first.

ALEX. GILCHRIST, JR.,
(Seal) Clerk.

95 BIGHAM, ENGLAR & JONES,
Proctors for Petitioner,
Office & P. O. Address,
No. 64 Wall Street,
Borough of Manhattan,
New York City.

96

**Answer.** 97

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. 98

The answer of Vera Alexander, as administratrix of the Estate of James Alexander, deceased, Lena Burns, as administratrix of the Estate of Charles Burns, deceased, James Keys, as administrator of the Estate of Joseph Basnett, deceased, Caroline Nelson, in behalf of all the beneficiaries of the Estate of John Brennan (also known as Thomas Brennan), deceased, Francisca Gomes Castro and Jose Reyes, as administrators of the Estate of John Castro, deceased, Margareta DeMeza and Felipe Durate, as administrators of the Estate of Domingo DeMeza, deceased, Annie Murphy, as administratrix of the Estate of Andrew S. Murphy, deceased, Adina Victoria Pusey, as administratrix of the Estate of Urah Pusey, deceased, James Coyle, in behalf of all the beneficiaries of the Estate of Thomas Coyle, deceased, Michael Dobranski, as administrator of the Estate of Joseph Dobranski, deceased, Anna Eberle, as administratrix of the Estate of Frank Eberle, deceased, Margaret Hart- 99

100 *Answer.*

man, as administratrix of the Estate of John Hartman, deceased, Mary Johnson, as administratrix of the Estate of Arthur Johnson, deceased, Leola Turner, as administratrix of the Estate of John A. Turner, deceased, Virginia Sumner, as administratrix of the Estate of Fred Sumner, deceased, Edith Samuels, as administratrix of the Estate of John Benjamin Samuels, deceased, Frank Labiak, as administrator of the Estate of Victor Kreminsky, deceased, Marie Marques, as administratrix of the
101 Estate of Frank S. Marques, deceased, Josefina Morales, in behalf of all the beneficiaries of the Estate of Carlos Morales, deceased, Mary T. McGoldrick, as administratrix of the Estate of Anthony Warren McGoldrick, deceased, Stephen Nemets, in behalf of all the beneficiaries of the Estate of George Nemets, deceased, Laura Rawlins, as administratrix of the Estate of Clifford Rawlins, deceased, Paul Lieneck, as administrator of the Estate of Paul Saul, deceased, Rose Vizcay, as administratrix of the Estate of Clarius Vizcay, deceased, Angela Corriette, as administratrix of the Estate of Balfour Corriette, deceased, Fred Ludwig, Louis Vega,
102 Bernard Lange, Thomas Jones, James P. Campbell, John Darco and Felipe Durate, to the petition herein, alleges as follows:

I. Claimants admit the allegations contained in the first sentence of paragraph marked "First" of the petition; deny any knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph.

II. Claimants deny any knowledge or information sufficient to form a belief as to the allegations

contained in paragraph "Second" of said petition, except that they deny that at all the times mentioned the "Linseed King" was tight, staunch, strong, fully manned and equipped and in all respects seaworthy.

III. Claimants admit that the "Linseed King" left the pier at the foot of 95th Street, North River, New York City, on December 20, 1926; admit that there was ice in the river; that a large number of persons were injured and drowned; deny that the 104
disaster, the manner of happening and the causes thereof have been fully and correctly stated; and claimants allege that the disaster occurred in the manner, under the circumstances and for the causes as hereinafter set forth in paragraphs "X," "XI" and "XIII"; and deny all the other allegations contained in said paragraphs.

IV. Claimants deny each and every allegation contained in paragraph "Fourth" of said petition.

V. Claimants deny each and every allegation contained in paragraph "Fifth" of said petition. 105

VI. Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "Sixth" of said petition.

VII. Claimants deny that the petitioner has the right to claim the benefit of the provisions of Sections 4283, 4284 and 4285 of the Revised Statutes and Acts amendatory thereof and supplemental thereto, as set forth in paragraph "Seventh" of said petition.

106 VIII. Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "Eighth" of said petition.

IX. Claimants deny all and singular the premises are true, as alleged in paragraph "Ninth" of said petition.

FURTHER ANSWERING THE SAID PETITION AND BY WAY OF A FIRST SEPARATE DEFENSE TO THIS
107 LIMITATION PROCEEDING AND THE RIGHT OF THE PETITIONER TO MAINTAIN THE SAME, CLAIMANTS REALLEGE ALL OF THE ADMISSIONS, DENIALS AND AFFIRMATIVE ALLEGATIONS HERETOFORE SET FORTH, AND IN ADDITION THERETO:

X. Claimants allege, upon information and belief, that on or about the 20th day of December, 1926, the "Linseed King" left the pier at or near 95th Street, North River, New York City, and while proceeding across the Hudson River on the aforesaid date, and while en route to a place known as
108 Edgwater, New Jersey, the said "Linseed King" sank, causing great loss of life and personal injury, as set forth in the respective claims of claimants filed with the Commissioner.

XI. Upon information and belief, that the said deaths by drowning and personal injuries inflicted were not in any way caused by or through any fault or negligence on the part of claimants or claimants' intestates, but were due wholly and solely to the wanton and reckless negligence and carelessness on the part of the petitioner, its officers, agents and employees, in the following re-

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spects, among others, which will be shown at the trial of these actions:

1. That the petitioner failed to provide claimants and claimants' intestates with a safe and proper means of transportation.

2. That the petitioner failed to provide claimants and claimants' intestates with a safe and seaworthy vessel.

3. That the said "Linseed King" was improperly constructed, and otherwise unseaworthy. 110

4. That the said "Linseed King" was unseaworthy, in that her steering gear was inadequate, worn and defective, and she was otherwise out of repair, and in need of repair.

5. That the said "Linseed King" was unseaworthy, in that she was not properly equipped, was improperly loaded and overloaded.

6. That the said "Linseed King" was loaded with a large number of men or employees beyond and in excess of her capacity, thereby, and together with her unseaworthy condition as herein-mentioned, endangered the life and limb of all those on board, including claimants and claimants' intestates. 111

7. That the said "Linseed King" was without a license, and without a licensed operator, and otherwise violated the steamboat inspection laws and the laws of navigation.

8. That the petitioner, its operator, master and other employees in control of the said

"Linseed King," were negligent and careless in the manner of the operation and navigation of the said "Linseed King," in that they invited and permitted an excessive number of men on board the said "Linseed King."

9. That the petitioner, its officers, agents and other employees, caused, permitted and otherwise suffered the "Linseed King" to undertake the aforesaid voyage on the Hudson River when said "Linseed King" was in an unseaworthy condition as herein mentioned, and when the said river contained floating ice and other material, which made it extra hazardous.

10. That the said "Linseed King" was not built or licensed for the purpose of carrying a large number of passengers, and was not constructed or designed, and was not otherwise in a seaworthy condition for such service and at that time of the year and in the condition of the river then prevailing.

11. That the petitioner, its officers, agents and employees, caused and permitted the said "Linseed King" to undertake the said fatal voyage when she was in an unseaworthy condition.

Claimants reserve the right to amend this answer to allege other faults on the part of the petitioner, the "Linseed King," its officers, agents, servants and employees.

FURTHER ANSWERING THE SAID PETITION AND BY WAY OF A SECOND SEPARATE DEFENSE TO THIS LIMITATION PROCEEDING:

*Answer.*

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XII. Claimants repeat and reiterate each and every admission, allegation and denial hereinbefore set forth, and further allege:

XIII. That the petitioner, its officers, agents and employees, knew or had reason to know the aforementioned facts; and the said conditions, circumstances, events, acts and the consequent disaster, which proximately caused and as a result of which claimants were injured and claimants' intestates lost their lives, were known to and were within the privity and knowledge of the petitioner.

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FURTHER ANSWERING THE SAID PETITION AND BY WAY OF A THIRD SEPARATE DEFENSE TO THIS LIMITATION PROCEEDING:

XIV. Claimants repeat and reiterate each and every admission, allegation and denial hereinbefore set forth, and further allege:

XV. That the said "Linseed King" is not a vessel within the scope and purpose of Sections 4283-4285 of the Revised Statutes, and Acts amendatory thereof and supplemental thereto, and that the petition does not state a cause of action within the law of limited liability.

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WHEREFORE, claimants pray that the said petition be dismissed, and all proceedings had herein vacated; and for such other and further relief as to this Honorable Court may seem just and proper.

SILAS B. AXTELL,
Proctor for Claimants,
Office & P. O. Address,
11 Moore Street,
Borough of Manhattan,
City of New York.

118 *Answer.*

State of New York, }
County of New York, } ss.:

SILAS B. AXTELL, being duly sworn, deposes and says that he is the proctor for the claimants in the within proceeding; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

119 The sources of deponent's knowledge and the grounds of his belief are communications had with claimants and reports received in reference to the proceeding hereinbefore set forth.

This verification is made by deponent rather than by claimants for the reason that not all the claimants are now in the City of New York, upon information and belief.

SILAS B. AXTELL.

Sworn to before me this
120 13th day of May, 1927.

EDITH McCORMICK,
Notary Public,
Kings County.
Kings Co. Clerk's No. 174, Reg. No. 9067.
N. Y. Co. Clerk's No. 179, Reg. No. 9128.
Term expires March 30, 1929.

## Answer of Hilda M. Hicks. 121

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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| In the Matter of The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. | A. 94/237. |

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The answer of Hilda M. Hicks, as Administratrix of the Estate of David Hicks, deceased, to the petition herein, alleges:

FIRST.—That by an order of the Surrogate's Court of the County of Queens, dated the 10th day of February, 1927, the said Hilda M. Hicks was appointed administratrix of the Estate of David Hicks, deceased. 123

SECOND.—Claimant admits the allegations contained in the first sentence of paragraph marked "First" of the petition; denies any knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph.

THIRD.—Claimant denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Second"

124 *Answer of Hilda M. Hicks.*

of the petition, except that she denies that at all times mentioned the "Linseed King" was tight, staunch, strong, fully manned and equipped, and in all respects seaworthy.

FOURTH.—Claimant admits that the "Linseed King" left the pier at the foot of 95th Street, North River, New York City, on December 20, 1926; admits that there was ice in the river; that a large number of persons were injured and drowned; de-
125 nies that the disaster, the manner of happening, and the causes thereof, have been fully and correctly stated, and claimant alleges that the disaster occurred in the manner, under the circumstances, and for the causes as hereinafter set forth in paragraph "Eleventh," "Twelfth" and "Fourteenth," and denies all the other allegations contained in said paragraph.

FIFTH.—Claimant denies each and every allegation contained in paragraph "Fourth" of the petition.

126 SIXTH.—Claimant denies each and every allegation contained in paragraph "Fifth" of said petition.

SEVENTH.—Claimant denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Sixth" of said petition.

EIGHTH.—Claimant denies that the petitioner has the right to claim the benefits of the provisions of sections 4283, 4284 and 4285 of the Revised Stat-

utes and Acts amendatory thereof and supplemental thereto, as set forth in paragraph "Seventh" of said petition.

NINTH.—Claimant denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "Eighth" of said petition.

TENTH.—Claimant denies all and singular the premises are true as alleged in paragraph "Ninth" of said petition. 128

FURTHER ANSWERING THE SAID PETITION AND BY WAY OF A FIRST SEPARATE DEFENSE TO THE LIMITATION PROCEEDING AND THE RIGHT OF THE PETITIONER TO MAINTAIN THE SAME, CLAIMS, REALLEGES ALL OF THE ADMISSIONS, DENIALS AND AFFIRMATIVE ALLEGATIONS HERETOFORE SET FORTH, AND IN ADDITION THERETO, CLAIMANT ALLEGES, UPON INFORMATION AND BELIEF:

ELEVENTH.—That on or about the 20th day of December, 1926, the "Linseed King" left the pier at or near 95th Street, North River, New York City, and while proceeding across the Hudson River on the aforesaid date, and while en route to a place known as Edgewater, New Jersey, the said "Linseed King" sank, causing great loss of life and personal injury, as set forth in the respective claims of the various claimants filed with the Commissioner. 129

TWELFTH.—Upon information and belief, that the said death and drowning inflicted upon claim-

130 *Answer of Hilda M. Hicks.*

ant's intestate was not in any way caused by or through any fault or negligence on the part of claimant's intestate, but were due wholly and solely to the wanton and reckless negligence and carelessness on the part of the petitioner, its officers, agents and employees, in the following respects, among others, which will be shown at the trial of this action:

1. That the petitioner failed to provide claim-
131 ant's intestate with a safe and proper means of transportation.

2. That the petitioner failed to provide claimant's intestate with a safe and seaworthy vessel.

3. That the said "Linseed King" was improperly constructed and other wise unseaworthy.

4. That the "Linseed King" was unseaworthy in that her steering gear was inadequate, worn and defective, and she was otherwise out of repair and in need of repair.

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5. That the said "Linseed King" was unseaworthy in that she was not properly equipped, was improperly loaded and overloaded.

6. That the said "Linseed King" was loaded with a large number of men, or employees, beyond and in excess of her capacity, thereby and together with her unseaworthy condition, as herein mentioned, endangered the lives of all of those on board, including claimant's intestate.

7. That the said "Linseed King" was without a license and without a licensed operator, and other-

wise violated the steamboat inspection laws and the laws of navigation.

8. That the petitioner, its operator, master and other employees in control of the said "Linseed King" were negligent and careless in the manner of the operation and navigation of the said "Linseed King," in that they invited and permitted an excessive number of men on board the said "Linseed King."

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9. That the petitioner, its officers, agents and other employees caused, permitted and otherwise suffered the "Linseed King" to undertake the aforesaid voyage on the Hudson River when said "Linseed King" was in an unseaworthy condition, as herein mentioned, and when the said river contained floating ice and other material which made it extra hazardous.

10. That the said "Linseed King" was not built or licensed for the purpose of carrying a large number of passengers, and was not constructed or designed, and was not otherwise in a seaworthy condition for such service, and at that time of the year, and in the condition of the river then prevailing.

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11. That the petitioner, its officers, agents and employees caused and permitted the said "Linseed King" to undertake the said fatal voyage when she was in an unseaworthy condition.

Claimant reserves the right to amend this answer to allege other faults on the part of the petitioner, "Linseed King," its officers, agents, servants and employees.

136 *Answer of Hilda M. Hicks.*

FURTHER ANSWERING THE SAID PETITION, AND BY WAY OF A SECOND SEPARATE DEFENSE TO THE LIMITATION PROCEEDING:

THIRTEENTH.—Claimant repeats and reiterates each and every admission, allegation and denial hereinbefore set forth, and further alleges.

FOURTEENTH.—That the petitioner, its officers, agents and employees knew, or had reason to know,
137 the aforesaid mentioned facts, and the said conditions, circumstances, events, acts and the consequent disaster, which proximately caused, and as a result of which claimant's intestate lost his life, were known to and with the privity and knowledge of the petitioner.

FURTHER ANSWERING THE SAID PETITION AND BY WAY OF A THIRD SEPARATE DEFENSE TO THIS LIMITATION PROCEEDING:

FIFTEENTH.—Claimant repeats and reiterates each and every admission, allegation and denial
138 hereinbefore set forth, and further alleges:

SIXTEENTH.—That the said "Linseed King" is not a vessel within the scope and purpose of sections 4283-4285 of the Revised Statutes and Acts amendatory thereof and supplemental thereto, and that the petition does not state a cause of action within the law of limited liability.

WHEREFORE, claimant prays that the said petition be dismissed and all proceedings had herein vacated, and that her claim in the sum of Seventy-five thousand Dollars ($75,000.00), filed with the

Commissioner appointed by this Honorable Court by order dated March 5, 1927, be allowed with interest thereon from the 20th day of December, 1926, and that said claimant have a decree awarding to her such sum, together with the costs and disbursements of this proceeding, and that she have such other and further relief in the premises as to this Court may seem just and proper.

OELAND & KUHN,
Proctors for Claimant, 140
Office and Post Office Address,
No. 115 Broadway,
Borough of Manhattan,
City of New York.

(Verified by Hilda M. Hicks.)

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## Answer of Millicent Ifill.

To the Honorable Judges of the United States District Court for the Southern District of New 141 York:

The answer of the claimant and respondent, Millicent Ifill, as administratrix of the Goods, chattels and credits of McBean H. Ifill, deceased, to the petition of Spencer Kellogg & Sons, Inc., as owner of the Motorboat "Linseed King," in a cause of limitation of liability, civil and maritime, alleges as follows:

FIRST.—That on the 7th day of January, 1927, by a decree of the Surrogates' Court of the County

142 *Answer of Millicent Ifill.*

of New York, your claimant was appointed Administratrix of the goods, chattels and credits of McBean H. Ifill, deceased, and letters of administration upon the estate of the said deceased, were thereafter duly issued to her.

SECOND.—Upon information and belief, she admits the allegations contained in Article "First" of the petition.

143 THIRD.—She denies, upon information and belief, that at the times mentioned in the petition, the Motorboat "Linseed King" was tight, strong, staunch, fully manned or equipped or in all respects seaworthy and she denies having any information sufficient to form a belief as to the truth of any of the other allegations contained in said Article of the petition.

FOURTH.—She admits that the said Motorboat sank in the Hudson River or North River in the early morning of December 20th, 1926, and that a large number of persons aboard were drowned and
144 she specifically admits that, as a result of the sinking of the boat, her intestate, McBean H. Ifill, was drowned. She denies, upon information and belief, that the number of persons permitted to embark, was less than the capacity of the vessel, or that life preservers were provided for more than eighty persons, or that the vessel and all its equipment was in first class condition, except as herein specifically admitted. She denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Article of the petition.

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FIFTH.—Upon information and belief she denies each and every allegation contained in Articles "Fourth" and "Fifth" of the petition.

SIXTH.—She denies having any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in articles "Sixth," "Seventh," "Eighth" and "Ninth" of the petition.

WHEREFORE, the claimant and respondent, Millicent Ifill, as Administratrix of the goods, chattels and credits of McBean H. Ifill, deceased, prays that the petition herein be dismissed and that her claim in the sum of One hundred thousand ($100,000) Dollars, filed with the Commissioner appointed in this proceeding by this Honorable Court, by order dated March 5th, 1927, be allowed with interest thereon from the 20th day of December, 1926, and that the said claimant and respondent have a decree, awarding to her such sum together with the costs of this proceeding and that she have such other, further and different relief in the premises which may, to this Court seem just.

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KURZMAN & FRANK,
Proctors for Claimant,
Millicent Ifill,
Office & P. O. Address,
25 Broad Street,
Borough of Manhattan,
City of New York.

(Verified by Millicent Ifill.)

148 **Answer of Padro Mitchell.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of SPENCER KELLOGG & SONS, INC., as owner of the
149 Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

Padro Mitchell, by Joseph & Demov, his attorneys answering the petition herein alleges:

FIRST.—He admits that Spencer Kellogg & Sons, Inc., is the owner of the boat "Linseed King" and denies any knowledge or information sufficient to form a belief as to all the other allegations contained in paragraph "First."

150 SECOND.—He admits that on or about December 20, 1926, the "Linseed King" floundered and sunk in the North River, and that a large number of people who were on said boat was drowned, injured and died from exposure, and upon information and belief, denies all the other allegations contained in paragraph "Third."

THIRD.—He denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "Second," "Sixth," "Seventh," "Eighth" and "Ninth."

FOURTH.—He denies each and every allegation contained in paragraphs "Fourth" and "Fifth."

AS AND FOR A SEPARATE DEFENSE.

FIFTH.—The said Padro Mitchell further answering said petition and as a separate defense alleges each and every of the facts contained in a certain complaint filed and served in an action now pending between the said Padro Mitchell as plaintiff and the petitioner herein as defendant in the Supreme Court of the State of New York, New York, with the same full force and effect as if fully set forth at length herein, a copy of which said complaint is hereto annexed and made part hereof. 152

WHEREFORE, the said Padro Mitchell prays that the petition herein be dismissed with costs and that he be permitted to continue his action in the Supreme Court, New York County for the relief therein prayed for besides the costs and disbursements of this proceeding, and for such other and further relief as may be just and proper.

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JOSEPH & DEMOV,
Attorneys for Padro Mitchell,
1431 Broadway,
Borough of Manhattan,
City of New York.

154 *Answer of Padro Mitchell.*

SUPREME COURT,
NEW YORK COUNTY.

PADRO MITCHELL,
*Plaintiff,*
against
SPENCER KELLOGG & SONS, INC.,
*Defendant.*

155

Plaintiff complaining of the defendant, by its attorneys, Joseph & Demov, alleges:

FIRST.—Upon information and belief, that at all times hereinafter mentioned, the above named defendant was a domestic corporation.

SECOND.—Upon information and belief, that at all times hereinafter mentioned, the above named defendant maintained a plant, factory, or business at Edgewater, in the State of New Jersey.

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THIRD.—That prior to the 20th day of December, 1926, the plaintiff and the defendant entered into an agreement wherein and whereby for a consideration to be paid to him, the plaintiff duly agreed to enter into the employ of the defendant, and the defendant hired the plaintiff, it being agreed by the parties hereto that such employment was to be at the Edgewater plant of the defendant or such other place or places as may from time to time be designated by the defendant.

FOURTH.—Upon information and belief that at all times hereinafter mentioned, the above named defendant was the owner of, managed, controlled and operated a certain boat known by the name of "Linseed King."

FIFTH.—Upon information and belief, the plaintiff alleges that at all times hereinafter mentioned, the above named defendant used and employed such boat known as the "Linseed King" in transporting its employees from the City of New York 158
to its plant located at Edgewater, New Jersey.

SIXTH.—Upon information and belief, that the said boat "Linseed King" was at all times hereinafter mentioned, in charge of one John Rohweder, and that the said John Rohweder, was in the employ of the defendant, and had been placed in charge of said boat as its captain and operator.

SEVENTH.—Upon information and belief, the plaintiff alleges that the said John Rohweder at all times hereinafter mentioned, was an unlicensed pilot and captain, and that the fact that he was 159
such unlicensed pilot and captain was known and within the knowledge of the defendant at the time of his employment and at all times hereinafter mentioned.

EIGHTH.—That prior to the 20th day of December, 1926, and subsequent to the date of hiring of the plaintiff by the defendant, the plaintiff was directed by the defendant to be and appear and present himself at the West 96th Street pier, in the City of New York, and was further directed to board

160 *Answer of Padro Mitchell.*

the steamer "Linseed King" at that place, and to proceed thereon to the plaintiff of the defendant located at Edgewater, New Jersey.

NINTH.—That pursuant to such instructions, this plaintiff duly appeared at the West 96th Street pier, and did, pursuant to the instructions of the defendant, duly board the steamer "Linseed King" for the purpose of being transported to the place of business of the defendant at Edgewater, New
161 Jersey.

TENTH.—That on the said 20th day of December, 1926, while the said steamer was proceeding towards Edgewater, New Jersey, and while plaintiff herein was lawfully, legally, and pursuant to the instructions of the defendant on board thereof, the said boat suddenly foundered and sunk in the Hudson River, which is a navigable water within the United States.

ELEVENTH.—That the foundering and sinking of said boat was due entirely to and by reason of the
162 carelessness and negligence of the defendant, its agents and servants, and was caused by reason of the fact that the captain or person in charge thereof was an unlicensed pilot and operator, was unfit and incapable of performing the duties of a captain and operator of a boat, and by reason of the careless, negligent and unsafe manner in which the said boat was being operated by the persons in charge thereof, and by reason of the overcrowding of said boat and overloading of the same beyond its capacity and contrary to the rules and regulations of maritime laws of the United States in such

cases made and provided, and by reason of the unseaworthiness of said boat, of all of which the defendant had due and full knowledge, and all of which occurred without any fault or negligence on the part of the plaintiff herein.

TWELFTH.—That as a result of the foundering and sinking of said boat, the plaintiff herein was thrown into the waters of the Hudson River, was immersed therein, and compelled to remain in said water for some time, and by reason of the exposure, he sustained severe injuries to various parts of his body, was greatly shocked, and his nervous system seriously injured. 164

THIRTEENTH.—That by reason of such injuries, the plaintiff herein was confined to his bed for a long period of time, and alleges that such injuries sustained by him are of a lasting and permanent character, and that by reason thereof, he may be unable to continue his usual vocation with the same efficiency as prior to the date that he sustained such injuries, and may not be able to continue his vocation and will continue to suffer for a long period of time because of such injuries, all to his damage. 165

FOURTEENTH.—That as a result of such injuries, the plaintiff was compelled to and did expend large sums of money and will be compelled to expend further sums of money for medical attendance and medicines, and has been and will be for a long time unable to do any work or to continue his vocation, by reason of which he has lost and will continue to lose large sums which he otherwise would have earned.

166 *Answer of Padro Mitchell.*

FIFTEENTH.—That by reason of the terms herein, the plaintiff has been damaged in the sum of $25,000.

WHEREFORE, plaintiff demands judgment against the defendant herein for the sum of $25,000 together with the costs and disbursements of this action.

JOSEPH & DEMOV,
Attorneys for Plaintiff,
1431 Broadway,
167 Borough of Manhattan,
City of New York.

(Verified by Padro Mitchell.)

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## Answer of Emma Gonzales Navas.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

168 In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

The answer of Emma Gonzalez Navas as administratrix of the goods, chattels and credits that

were of Marcos Gonzalez Navas, deceased, hereinafter termed the claimant, to the petition of Spencer Kellogg & Sons, Inc., as owner of the motorboat "Linseed King," her engines, etc., for Limitation of Liability, Civil and Maritime, respectfully alleges as follows:

FIRST.—Said claimant admits the allegations contained in the "First" clause or paragraph of said petition.

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SECOND.—Said claimant denies that she has any knowledge or information sufficient to form a belief as to any of the allegations contained in the Second, Third, Sixth, Seventh and Eighth clauses or paragraphs of said petition, except that she upon information and belief denies that the said motorboat "Linseed King" was at any of the times mentioned in said petition seaworthy or tight, staunch, strong, fully manned, or fully equipped, and denies that at any of the times mentioned in the said petition and particularly on December 20th, 1926, the said vessel and/or its equipment was in first class or proper condition and denies 171 that the numbers of persons permitted to embark on said vessel on December 20th, 1926, was less than the capacity of the vessel and denies that life preservers were on said date provided for more than or as many as Eighty.

THIRD.—Said claimant denies each and every allegation contained in the "Fourth," "Fifth" and "Ninth" clauses or paragraphs of said petition except that she admits that the matters alleged in the petition are within the Admiralty and Mari-

172 *Answer of Emma Gonzales Navas.*

time jurisdiction of the United States and of the Honorable Court.

FURTHER ANSWERING THE SAID PETITION THE SAID CLAIMANT FURTHER ALLEGES AS FOLLOWS:

FOURTH.—That Marcos Gonzales Navas died on the twentieth of December, 1926, in the Hudson River opposite the Borough of Manhattan, City, County and State of New York, and within the County, State and Southern District of New York,
173 of which City, County and State he was then a resident and left him surviving as his only heirs and next of kin his sisters, the said Emma Gonzalez Navas and Maria Elena Gonzalez de Gaitan, and on the 6th day of January, 1927, the said Emma Gonzalez Navas was granted letters of administration upon the goods, chattels and credits that were of the said Marcos Gonzalez Navas, deceased, by a Surrogate of the County of New York, in the State of New York, and by the said letters the said Emma Gonzalez Navas was and is duly authorized and empowered to institute and main-
174 tain any suit in admiralty.

FIFTH.—Upon information and belief that the petitioner herein, the said Spencer Kellogg & Sons, Inc., was at all the times hereinafter mentioned and still is a corporation organized and existing under and by virtue of the laws of the State of New York and having a principal office for the conduct of its business of manufacturing linseed oil and otherwise, at Number 100 East Fifty-second Street, in the City, County and State and Southern District of New York.

175

SIXTH.—Upon information and belief that the said petitioner Spencer Kellogg & Sons, Inc., at all the times hereinafter mentioned owned, operated, managed, controlled and sailed upon the Hudson River between the Borough of Manhattan, City and State of New York, and Edgewater, in the State of New Jersey, a certain boat or launch, to wit, the "Linseed King," and employed the master and crew of said launch.

SEVENTH.—Upon information and belief that on 176
the 20th day of December, 1926, the said Marcos Gonzalez Navas being then employed by the said petitioner, as a laborer in the works or factory of the petitioner situate at said Edgewater, and then residing in the Borough of Manhattan, City and State of New York, was a passenger on said launch on a voyage across the Hudson River from said Borough of Manhattan, City and State of New York to said Edgewater, in the State of New Jersey, and was being transported as such passenger on said launch across the said river by the petitioner, which had contracted to transport him safely and
without negligence from said Borough of Manhat- 177
tan to said Edgewater.

EIGHTH.—Upon information and belief that at the time of said voyage on the 20th day of December, 1926, the said launch was not in a good or seaworthy condition as the petitioner and its officers and agents, and particularly its general manager who was also the master of said launch well knew and was particularly unsafe to navigate the waters of the Hudson River which were then turbulent, with a strong incoming tide meeting the current

of the river, and full of swirling eddies and cross currents and of large and small floes and thick pieces of ice floating and moving in the water.

NINTH.—Upon information and belief that on the said twentieth day of December, 1926, the petitioner, well knowing the dangers and risks thereby incurred, but of which the passengers on said launch were ignorant and well knowing also the frail, poor and unseaworthy condition of said
179 launch, sent the said launch on its said voyage with the result that said launch soon after leaving the New York shore was caught and carried in the ice filled current upstream and was crushed and broken by and between said floes and pieces of ice, wrecked, capsized and sunk, and the said Marcos Gonzalez Navas being then a passenger on board said launch was by reason thereof killed and drowned, all of which occurred within the limits of the Southern District of New York.

TENTH.—Upon information and belief that said launch was sent by the petitioner upon said voyage
180 on the 20th day of December, 1926, without a competent or sufficient crew and without a competent or duly licensed master, and without proper equipment and with unsafe steering apparatus and unseaworthy.

ELEVENTH.—Upon information and belief the said launch upon her said voyage was by the petitioner and by the petitioner's procurement and with its consent, greatly overcrowded and carried passengers in number greatly exceeding the number which it might safely carry on any voyage, even in

waters quiet and free from floating ice and greatly in excess of the number of passengers permitted by law to be carried, and that such over-crowding of said launch increased the difficulty of properly navigating her, impeded the escape of her passengers when the launch was wrecked and their rescue, and caused or contributed to the said death of said Marcos Gonzalez Navas.

TWELFTH.—Upon information and belief that said launch upon her said voyage and when she 182
was wrecked as aforesaid did not carry safe and proper life preservers sufficient in number for the number of passengers carried, or as many safe and proper life preservers as required by law and that such, if any, life preservers as were then on said launch were unfit for use and so placed that they could not be obtained in time for use by the passengers; all of which was known to the petitioner and further impeded and prevented the said Marcos Gonzalez Navas from saving himself and contributed to causing his death.

THIRTEENTH.—Upon information and belief that 183
the master or other person in charge of said launch when she was wrecked as aforesaid was, as the petitioner then knew or should have known, incompetent, unskillful, unlicensed and unauthorized by law to navigate said launch.

FOURTEENTH.—Upon information and belief that the said Marcos Gonzalez Navas was a passenger on said launch, at the time it was wrecked and he was killed as aforesaid, at the order and request of the petitioner and that his safe transportation

184 *Answer of Emma Gonzales Navas.*

to and from his work was a part of the compensation agreed to be given said Marcos Gonzalez Navas by the petitioner.

FIFTEENTH.—Upon information and belief that the aforesaid death of the said Marcos Gonzalez Navas was solely caused by the fault and negligence of the petitioner, its agents, servants and employees and was not caused by or contributed to by any negligence on the part of the said Marcos
185 Gonzalez Navas.

SIXTEENTH.—That at the time of his death the said Marcos Gonzalez Navas of the age of thirty-eighty years, was in good health and upon information and belief earned, as a laborer, at least the sum of Thirty-three Dollars per week.

SEVENTEENTH.—That at the time of his death and for a long time prior thereto the said Marcos Gonzalez Navas was the sole support of his two said sisters and the four infant children of his sister Maria Elena.

186

EIGHTEENTH.—That by reason of the premises the said claimant and the heirs and next of kin of the said Marcos Gonzalez Navas on whose behalf the claimant now makes claim against the petitioner, have sustained damages amounting to the sum of Twenty-five Thousand Dollars.

WHEREFORE the said claimant prays:

1. That the said petition of said Spencer Kellogg & Sons, Inc., be dismissed and said claimant be permitted to prosecute against said Spencer Kel-

logg & Sons, Inc., in any court having jurisdiction thereof, any and every claim arising out of the death of said Marcos Gonzalez Navas on December 20th, 1926, and that the injunction against this claimant contained in the order of this Court dated March 5th, 1927, be vacated and that said claimant be awarded such other and further relief as to this Court may seem just and proper in the premises.

MARSH, SPENCER & MARSH,
Attorneys for the Claimant,
Office and Post Office Address,
160 Broadway,
Borough of Manhattan,
City of New York. 188

(Verified by Emma Gonzalez Navas.)

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190 **Answer of Helen Roberts.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability,
191 as owner of the Motorboat "LINSEED KING," her engines, etc.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Helen Roberts, as Administratrix of the goods, chattels and credits of Alfred Roberts, deceased, to the petition of Spencer Kellogg and Sons, Inc., as owner of the Motorboat "Linseed
192 King," her engines, etc., for exemption from or limitation of liability, civil and maritime, respectfully alleges, upon information and belief, as follows:

FIRST.—Admits the allegations contained in the "First" paragraph of the petition, except that the answering party denies knowledge or information sufficient to form a belief as to whether the said motorboat is now, and during the pendency of process herein will be within this District and jurisdiction.

SECOND.—Admits as to the "Second" paragraph of the petition that the Motorboat "Linseed King" is a wooden vessel in excess of forty (40) feet in length propelled by a gasoline engine, and denies knowledge or information sufficient to form a belief as to her exact length, breadth and depth, and as to her exact gross and net tonnage, and as to her official number and permanent license or number, and except as herein admitted denies each and every allegation contained in the "Second" paragraph of the petition. 194

THIRD.—Denies such part of the "Third" allegation of the petition as alleges that the "Linseed King" was in charge of a licensed and competent operator and captain, and that she had on board about sixty (60) persons, and that the number of persons permitted to embark was considerably less than the capacity of the vessel, and that life preservers were provided for more than eighty (80), and that the vessel and all its equipment was in first class condition, and denies knowledge or information sufficient to form a belief as to whether or not the captain at once ordered those on board 195 to put on life preservers and proceeded at full speed for shore.

FOURTH.—Denies the allegations contained in the "Fourth" paragraph of the petition.

FIFTH.—Denies the allegations contained in the "Fifth" paragraph of the petition.

SIXTH.—Admits the allegations contained in the "Sixth" paragraph of the petition, except that it

196 *Answer of Helen Roberts.*

denies knowledge or information sufficient to form a belief as to the filing of claims with the New Jersey State Workmen's Compensation Bureau.

SEVENTH.—Denies knowledge or information sufficient to form a belief as to the desires the petitioner has alleged therein, except as evidenced by the petition.

EIGHTH.—Denies knowledge or information sufficient to form a belief as to the allegations con-
197 tained in the "Eighth" paragraph of the petition.

NINTH.—Denies the allegations contained in the "Ninth" paragraph of the petition.

IN FURTHER ANSWER TO THE PETITION THE ANSWERING PARTY HEREIN ALLEGES AS FOLLOWS:

TENTH.—The condition of the North or Hudson River at the time of the voyage in controversy was a mid-winter condition. It was dark. There was considerable ice floating down the river at a con-
198 siderable speed with the current. The action of the tide and the current resulted in a rough and choppy sea with conflicting cross-currents.

ELEVENTH.—The foregoing conditions of the river and the existence of large cakes of ice therein floating down stream at a rapid rate was a matter within the privity and knowledge of Spencer Kellogg and Sons, Inc., the corporate owner of this vessel, and its managing agents and representatives who were situated and located at Edgewater, New Jersey, immediately adjacent to the river.

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TWELFTH:—The said Motorboat "Linseed King," her engines, equipment and tackle, was unseaworthy and unfit for navigation upon the said river under the said conditions which existed thereon at the time in question, irrespective of her load, for the reason that the said motorboat had only a single thin skin of cedar with no bulkheads and no divisions into compartments and no air tight tanks or compartments whatever, and upon such passage across this river in the then existing darkness, severe contact with the sharp edges of the moving ice cakes and floes, and the consequent puncturing of the hull, was inevitable.

200

THIRTEENTH.—The aforesaid condition of the said boat was within the privity and knowledge of Spencer Kellogg and Sons, Inc., its corporate owner, and the managing agents and representatives of the said company, who were well acquainted with the conditions of the said boat and the condition of the said river.

FOURTEENTH.—The said vessel was unseaworthy and unfit for navigation upon the said river for the further reason that she was loaded with a cargo of approximately ninety-five (95) to one hundred twenty-five (125) persons, a number far in excess of her capacity, at the time of the disaster, and there was as many persons within the cabin of this boat as space would permit and these persons were wedged and crowded in, standing and sitting, as compactly as it was possible to crowd the space within the boat, and in addition thereto there was a considerable number of persons outside upon the deck of the boat for the reason that there was no

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further room for these persons upon the interior of the cabin. The overloading of this boat in this fashion was a matter of common occurrence. The boat only had a capacity that was no more than sufficient under the existing weather conditions of the wintertime for the regular employees of its owner, but despite this fact it was customary and habitual to insert advertisements for additional labor in the newspapers whenever it was necessary to engage stevedores to unload vessels in the Edge-
203 water, New Jersey plant of the owner of this vessel, and at such times it was a common occurrence to overload this boat in the manner described in order to transport these employees from the New York to the New Jersey shore, using every available bit of space and standing room upon this boat for this purpose.

FIFTEENTH.—The aforesaid facts and circumstances as to the overloading of this vessel in the manner described at and prior to the time of this catastrophe was within the knowledge and privity of Spencer Kellogg and Sons, Inc., the corporate
204 owner of this motorboat, its managing agents and representatives.

SIXTEENTH.—The said motorboat was further unseaworthy and unfit for navigation for the reason that there was a considerably less number of life preservers upon the said boat than the number of persons aboard her, and the said life preservers were so situated and secured that it was impossible for the same to be readily employed by the passengers under the condition of their transportation in such excessive numbers, and further in that the

exits from the cabin of the said boat were inadequate for the number of persons customarily transported and being transported at the said time in that the said windows were small, and in that the panes of glass therein were enmeshed with impenetrable wire mesh, and in that there was only a single narrow doorway permitting the egress of only a single person at a time, and further in that the great number of standees standing upon the said boat, together with the height and weight of the cabin and the weight of the life preservers at 206
the ceiling thereof, and the extent in number and in weight of the persons forward of the motor caused the said motorboat to be submerged in the water to such an extreme depth that the surface of the water and of the floating ice thereon made contact with the vessel at a point within a few inches of the deck at the bow thereof, so that the metal sheathing upon the lower exterior of the vessel was of no avail or protection whatsoever, and so that the said vessel was down at the bow and so unwieldly and top-heavy and subject to side sway and careening as to make sinking inevitable upon contact with the ice known to be in the river. 207

SEVENTEENTH.—The facts set forth in the foregoing paragraph were within the knowledge and privity of Spencer Kellogg and Sons, Inc., the corporate owner of the said boat, its managing agents and representatives.

EIGHTEENTH.—The said Motorboat was further unseaworthy in that the rudder and wheel were unmanageable and unsteerable and mechanically outworn and defective and did not respond prop-

erly to the hand of the operator, and in that the mechanical control of the motor of the said boat, including the stopping, starting and reversing mechanism, and their equipment and appliances were out of repair, defective and outworn, so that the headway of the said boat could not be properly lessened, slackened or reversed and the said boat was further unseaworthy in that there was no proper operating searchlights upon the said vessel to reveal the existing dangers in the said river,
209 and the said boat was further unseaworthy in that she was improperly designed and balanced so that she was down by the fore and so that she was top-heavy, and not easily steered or managed, and in that her hull was weak and in a state of disrepair.

NINETEENTH.—The facts stated in the foregoing paragraph were within the privity and knowledge of Spencer Kellogg and Sons, Inc., the corporate owner of the said boat, its managing agents and representatives.

TWENTIETH.—The said owner of the said vessel
210 was further at fault and negligent in that the said owner did not properly inspect the said boat or make proper and appropriate rules and regulations with respect to its operation, loading and management.

TWENTY-FIRST.—The owner of the said boat, its managing agents and representatives were further negligent and at fault in that the said boat was operated in violation of the laws of the United States with respect to the said boat, including the Act of June 9th, 1910, chapter 268, 36 Statutes at

Large 462, and the regulations adopted by the Department of Commerce pursuant thereto, and failed to have the said vessel inspected pursuant thereto, and failed to have the said vessel properly and lawfully licensed and failed to have the operator thereof properly and lawfully examined and licensed, and failed to have the life preservers thereon as prescribed by law, and further failed to obey the provisions of law of the United States with respect to the carriage of passengers and the operation of a ferry. 212

TWENTY-SECOND.—The owner of the said boat, its managing agents and representatives were negligent and at fault in that the said boat was improperly and inadequately manned in that there was only one person thereon, and in that the said person was incompetent and incapable of operating the said boat, and in that the said operator of the said boat was not properly licensed, and in that the master of the said vessel was both incompetent and absent.

TWENTY-THIRD.—The owner of the said boat was 213
further at fault in that the employment of the said boat in the manner described under the conditions described constituted a wanton disregard for the lives of others, and was grossly negligent.

TWENTY-FOURTH.—That the owner of the said Motorboat is not entitled to avail itself of the provisions of the limitation of liability acts herein for the reason that the said Motorboat was not engaged in commerce as contemplated by the said acts, and that the limitation of liability with respect to the

said boat is not within the intendment of the said act.

TWENTY-FIFTH.—By reason of the foregoing facts and circumstances to the extent admitted as to the petition and as alleged in this answer, the intestate of the answering party herein, Alfred Roberts, was caused to be drowned by the sinking of the "Linseed King," while lawfully and rightfully a passenger thereon, and left him surviving as his
215 heirs and next of kin his wife, Helen Roberts, and his daughter, Margaret Roberts, and on or about the 4th day of January, 1927, letters of administration upon the estate of the said deceased were duly issued to Helen Roberts, the widow of the deceased, by the Surrogate of the County of New York, and she has duly qualified and is now acting as Administratrix thereunder, and thereby is fully empowered and authorized in all respects to bring any necessary action to recover for the death of the decedent.

TWENTY-SIXTH.—That the answering party here-
216 in, Helen Roberts, as Administratrix, has instituted an action as plaintiff in the Supreme Court of the State of New York, in New York County, by the service of a summons and complaint for damages in the sum of One hundred thousand Dollars ($100,000.00), for the wrongful death of the decedent, against Spencer Kellogg and Sons, Inc., as defendant, and the said action is now pending undetermined and the said answering party appears herein, by the filing of a prima facie proof of claim before the commissioner, and by this answer for the sole purpose of contesting and re-

futing the petition filed herein. The said answering party upon the denial of the said petition expressly reserves her right to continue her initial action for damages instituted in the Supreme Court, New York, County, to judgment.

TWENTY-SEVENTH.—The estate of the decedent herein was damaged by the death of the decedent in the sum of One hundred thousand Dollars ($100,000.00), and the death of the said decedent named herein was caused solely by the fault and 218
neglect of Spencer Kellogg and Sons, Inc., and without any fault or negligence whatsoever upon the part of the decedent named herein.

WHEREFORE, the answering party herein prays:

FIRST.—That the prayer of the petitioner herein be denied with costs.

SECOND.—That the monition granted pursuant to the petition be vacated.

THIRD.—That the injunction issued herein be va- 219
cated.

FOURTH.—That the petitioner herein be not permitted to avail itself of the limitation of liability acts.

FIFTH.—That the answering party herein may have such other or further relief as the justice of the cause may require.

220 *Answer of Helen Roberts.*

LESTER HAND JAYNE,
Proctor for the Answering Party Herein,
Office and Post Office Address,
52 Wall Street,
Borough of Manhattan,
New York City.

(Verified by Helen Roberts.)

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221 The answers of Geneva Sims, and Nora McEachin are similar to the foregoing answer of Helen Roberts.

222

## Claim of Vera Alexander, as Administratrix, Etc. 223

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. 224

Now comes Vera Alexander, as duly qualified administratrix of the Estate of James Alexander, deceased, through her undersigned proctor, and in response to the monition issued out of this Court on the petition of Spencer Kellogg & Sons, Inc., to limit its liability for all claims arising out of the sinking of the "Linseed King" on or about December 20, 1926, makes claim against Spencer Kellogg & Sons, Inc., and the "Linseed King," in a cause of damages for death, and respectfully alleges: 225

I.

That at all the times herein mentioned, the petitioner was and still is a corporation, organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business at No. 100 East 42nd Street, in the Borough of Manhattan, City, County and State of New York.

226 *Claim of Vera Alexander, as Administratrix, Etc.*

II.

That at all the times herein mentioned, the petitioner owned, managed, operated and controlled a boat or other class of water craft known as the "Linseed King."

III.

That at all the times herein mentioned, and for some time prior thereto, the petitioner owned, managed, operated and/or controlled a factory or plant
227 at Edgewater, New Jersey.

IV.

Upon information and belief, that at all the times herein mentioned, the petitioner maintained, operated and used the said "Linseed King" in connection with its business, and for the purposes of carrying its employees, prospective employees and other persons as passengers from the New York side of the Hudson River to New Jersey, and from the New Jersey side of the Hudson River to New
228 York.

V.

That on or about the 20th day of December, 1926, claimant's intestate boarded the said "Linseed King" at or near the pier at 95th Street, New York City, at the invitation and request of the petitioner, its officers, agents, servants and employees, to proceed as a passenger to the New Jersey side of the Hudson River, to-wit: Edgewater, New Jersey, for the purpose of working for the petitioner.

VI.

That in accordance with said invitation and request of the petitioner, its agents, servants and employees, the claimant's intestate did board the said "Linseed King" with a large number of other men.

VII.

That the said "Linseed King" while proceeding across the Hudson River on the aforesaid date, and while en route to a place known as Edgewater, New 230
Jersey, the said "Linseed King" sank, and claimant's intestate was submerged in the water, drowned and died as a result thereof.

VIII.

Upon information and belief, that the said death by drowning was not in any way caused by or through any fault or negligence on the part of the deceased, but was due wholly and solely to the wanton and reckless negligence and carelessness on the part of the petitioner, its officers, agents and employees in the following respects, among others, 231
which will be shown at the trial of this case:

1. That the petitioner failed to provide claimant's intestate with a safe and proper means of transportation.

2. That the petitioner failed to provide claimant's intestate with a safe and seaworthy vessel.

3. That the said "Linseed King" was improperly constructed, and otherwise unseaworthy.

232 *Claim of Vera Alexander, as Administratrix, Etc.*

4. That the said "Linseed King" was unseaworthy, in that her steering gear was inadequate, worn and defective, and she was otherwise out of repair, and in need of repair.

5. That the said "Linseed King" was unseaworthy, in that she was not properly equipped, was improperly loaded and overloaded.

6. That the said "Linseed King" was loaded with a large number of men or employees beyond and in excess of her capacity, thereby,
233 and together with her unseaworthy condition as herein mentioned, endangered the life and limb of all those on board, including claimant's intestate.

7. That the said "Linseed King" was without a license, and without a licensed operator, and otherwise violated the steamboat inspection laws and the laws of navigation.

8. That the petitioner, its operator, master and other employees in control of the said "Linseed King" were negligent and careless in
234 the manner of the operation and navigation of the said "Linseed King," in that they invited and permitted an excessive number of men on board the said "Linseed King."

9. That the petitioner, its officers, agents and other employees, caused, permitted and otherwise suffered the "Linseed King" to undertake the aforesaid voyage on the Hudson River when said "Linseed King" was in an unseaworthy condition, as herein mentioned, and when the said river contained floating ice and other material, which made it extra-hazardous.

10. That the said "Linseed King" was not built or licensed for the purpose of carrying a large number of passengers, and was not constructed or designed, and was not otherwise in a seaworthy condition for such service and in the condition of the river then prevailing.

11. That the petitioner, its officers and agents caused and permitted the said "Linseed King" to undertake the said fatal voyage when she was in an unseaworthy condition.

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IX.

That the petitioner, its officers, agents and employees, knew or had reason to know the aforementioned facts; and the said conditions, circumstances, events, acts and the consequent disaster, which proximately caused, and as a result of which claimant's intestate lost his life, were known to and were within the privity and knowledge of the petitioner.

X.

That claimant's intestate left surviving him a 237
widow and an infant son, who were dependent upon the deceased for their support, and to whose maintenance and support the said deceased contributed regularly; that by reason of the death of claimant's intestate the said widow and infant son have been deprived of said contribution, and have thereby been damaged in the sum of One hundred thousand ($100,000) Dollars.

XI.

That claimant was duly appointed administratrix in the Surrogate's Court of the County of New

238 *Claim of Vera Alexander, as Administratrix, Etc.*

York, State of New York, on the 6th day of January, 1927, with power to prosecute this action.

XII.

That at all the times herein mentioned, there was and still is in force and effect a death statute under the laws of the States of New York and New Jersey and of the United States, and that by virtue of the aforesaid statutes and amendments thereto, claimant has a cause of action for the death thus occa-
239 sioned, and is entitled to recover, in addition thereto for the pain and suffering which the decedent suffered during the time of the disaster the further sum of Twenty-five thousand ($25,000) Dollars.

WHEREFORE, claimant presents this claim and prays that she be allowed damages in the amount of One hundred and twenty-five thousand ($125,000) Dollars; that payment thereof be decreed, and that such other and further order may be made as will protect the rights of claimant as to the Court shall seem just and proper.

240

SILAS B. AXTELL,
Proctor for Claimant,
Office & P. O. Address,
11 Moore Street,
Borough of Manhattan,
City of New York.

HERMAN J. WITTSTEIN,
Proctor for Claimant,
Office & P. O. Address,
11 Moore Street,
Borough of Manhattan,
City of New York.

State of New York, }
County of New York, } ss.:

SILAS B. AXTELL, being duly sworn, deposes and says that he is the proctor for the claimant in the within proceeding; that he has read the foregoing claim and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

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The sources of deponent's knowledge and the grounds of his belief are communications had with claimant and reports received in reference to the proceeding hereinbefore set forth.

This verification is made by deponent rather than by claimant for the reason that the claimant is not now in the County of New York, upon information and belief.

SILAS B. AXTELL.

Sworn to before me this
3rd day of May, 1927.

EDITH MCCORMICK,
Notary Public,
Kings County.

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Kings Co. Clerk's No. 174, Reg. No. 9067.
N. Y. Co. Clerk's No. 179, Reg. No. 9128.
Term expires March 30, 1929.

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## Notation that Other Claims in Death Cases are Similar.

All other claims in death cases not printed in full or referred to herein are similar to the above claim of Vera Alexander, as administratrix of the Estate of James Alexander, deceased, except as to amount and dependents.

244 **Proof of Claim of Helen Roberts.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat
245 "LINSEED KING," her engines, etc.

The claim of Helen Roberts, as Administratrix of the goods, chattels and credits of Alfred Roberts, deceased, respectfully alleges, upon information and belief, as follows:

FIRST.—On or about the 20th day of December, 1926, Alfred Roberts, then a resident of New York County, in the State of New York, died intestate,
246 and thereafter on or about the 4th day of January, 1927, letters of administration upon the estate of the said deceased were duly issued to Helen Roberts, the widow of the said deceased and the claimant herein, by the Surrogate of the County of New York, and she has duly qualified and is now acting as Administratrix thereunder, and thereby is fully empowered and authorized in all respects to bring and maintain all necessary action to recover damages for the death of the decedent.

SECOND.—At all the times hereinafter mentioned, the petitioner, Spencer Kellogg and Sons, Inc., was

the owner and managed, operated and controlled the gas propelled vessel known by the name of "Linseed King."

THIRD.—On the 20th day of December, 1926, the claimant's intestate, Alfred Roberts, was lawfully and rightfully a passenger upon the Motorboat "Linseed King," and the said boat was afloat upon the navigable waters of the Hudson River, voyaging from the New York to the New Jersey shore.

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FOURTH.—At the aforesaid time and place and while the claimant's intestate was situated as aforesaid upon the said boat "Linseed King," and solely due to the unlawful, negligent, careless, reckless, improper and unskilled construction, operation, navigation, management, control, equipment, manning and maintenance of the boat "Linseed King," the said vessel foundered and sank with the result that the claimant's intestate was thrown into the waters of the Hudson River and was suffocated and drowned.

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FIFTH.—The petitioner herein, the owner of the boat "Linseed King" had privy to and had knowledge of the foregoing facts and circumstances, and to the further fact that the said boat was unseaworthy, which said unseaworthiness resulted in the death aforesaid.

SIXTH.—The claimant's intestate was so suffocated and drowned entirely through the fault of the petitioner herein, and through no fault or neglect whatsoever on the part of the claimant's intestate.

250 *Proof of Claim of Helen Roberts.*

SEVENTH.—The claimant's intestate left him surviving, at the time of his death in the manner aforesaid, his wife, Helen Roberts, and his infant daughter, Margaret Roberts, as his sole heirs and next of kin, and the said persons were entirely dependent for support upon the claimant's intestate, and the claimant has been further and especially damaged with respect to expenditures incurred for the funeral and burial of the claimant's intestate.

251 EIGHTH.—By reason of the premises aforesaid, the claimant herein and the heirs and next of kin of the decedent have been damaged in the sum of One hundred Thousand Dollars ($100,000.00).

NINTH.—The claimant herein, Helen Roberts, as Administratrix aforesaid, has instituted an action in the Supreme Court New York County, State of New York, by the service of a summons and complaint against Spencer Kellogg and Sons, Inc., as defendant, to recover damages for the death of the claimant's intestate, and the said action is now pending undertermined, and the said claimant ap-
252 pears herein by the making and filing of this proof of claim before the Commissioner herein for the sole purpose of contesting and refuting the petition for limitation of liability filed herein, and for the purpose of answering the said petition. The said claimant upon the denial of the prayer of the said petition, as requested by her, expressly reserves her right to continue the initial action for damages, instituted in the Supreme Court of New York, New York County, to judgment, and the said claimant objects to the jurisdiction of this Court

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and of this Commissioner upon the grounds set forth in the answer to the petition.

LESTER HAND WAYNE,
Proctor for the Claimant Herein,
Office and Post Office Address,
52 Wall Street,
Borough of Manhattan,
City of New York.

(Verified by Helen Roberts.)

254

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The claims of Geneva Sims and Nora McEachin are similar to the foregoing claim of Helen Roberts, except as to the amount claimed and as to defendants.

255

## Proof of Claim of Mary J. Martin.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc.

State of New York, }
County of New York, } ss.:

MARY J. MARTIN, being duly sworn, deposes and says:

I am the administratrix of the goods, chattels and credits of Eric Martin, deceased.

I reside at No. 70 West 127th Street, in the Borough of Manhattan, City of New York.

Upon information and belief, on December 20th, 1926, the said decedent, Eric Martin, was lawfully and properly a passenger on the Motorboat "Linseed King" and was being transported from the foot of 95th Street, Hudson River, Borough of Manhattan, City of New York, to the place of the petitioner, Spencer Kellogg & Sons, Inc., at Edgewater, New Jersey. That the said launch or motorboat "Linseed King" was so negligently, carelessly and recklessly operated, managed and controlled by its Owners, Masters, Captains and servants, that it

was caused to founder and sink in the water of the Hudson River, thereby causing the drowning and death of the said Samuel Griffith, without any fault or negligence on his part.

I am entitled to maintain an action to recover damages for the death of the said Eric Martin and have been duly appointed administratrix of the goods, chattels and credits of said decedent for such purpose and hereby claim the sum of One Hundred Thousand ($100,000.00) Dollars as the amount of such damages, no part of which has been paid. 260

MARY J. MARTIN.

Sworn to before me this
30th day of March, 1927.

ESTHER GAU,
Notary Public,
N. Y. Co. #501.

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The claim of Violet Forde is similar to the foregoing claim of Mary J. Martin. 261

262 **Proof of Claim of Joseph Cassidy.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat
263 "LINSEED KING," her engines, etc.

State of New York, }
County of New York, } ss.:

JOSEPH CASSIDY, being duly sworn, deposes and says that he is an attorney associated in practice with Hays, St. John & Buckley, 43 Exchange Place, New York City, attorneys for the Estate of David H. Clark.

That David H. Clark formerly resided at 410 St.
264 Nicholas Avenue, in the Borough of Manhattan, City of New York. That upon information and belief, on December 20th, 1926, the said decedent, David H. Clark, was lawfully and properly a passenger on a motorboat or launch, "Linseed King," owned by petitioner, Spencer Kellogg & Sons, Inc., and was being transported from the foot of 95th Street, Hudson River, Borough of Manhattan, City of New York, to the place of said petitioner at Edgewater, New Jersey.

That the said launch or motorboat "Linseed King," was so negligently, carelessly operated, managed and controlled by its owners, master,

captain and servants that it was caused to founder and sink in the water of the Hudson River, thereby causing the drowning and death of said David H. Clark without any fault or negligence on his part. 265

That due to the fact that the parents of the said David H. Clark are aliens, no administrator or administratrix has as yet been appointed in the State of New York for his estate. That your deponent expects to have a public administrator or whomsoever the Court may designate appointed as administrator or administratrix of the said decedent's estate, and that this claim is made on behalf of the administrator or administratrix to be so appointed. 266

That the claim which is here made is made without any prejudice to the rights of the proper representative of the said decedent to take any necessary proceedings under the Workmen's Compensation Law of the State of New Jersey, as your deponent in behalf of the said administrator or administratrix to be appointed for the estate of said decedent elects to proceed under the said Workmen's Compensation Law of the State of New Jersey if that is possible, this claim being filed herein only to preserve the rights of the said decedent's estate in case proceedings under the Workmen's Compensation Law of the State of New Jersey are impossible. 267

The claim filed herein is for damages to which the estate of said decedent may be entitled, and the amount of damages sustained is $100,000, no part of which has been paid.

.....

Sworn to before me this
12th day of April, 1927.

268 **Proof of Claim of Emma Gonzales Navas.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of
269 Liability, Civil and Maritime.

In the Matter

of

The Proof of Claim of EMMA GONZALES NAVAS, as administratrix, etc., of MARCOS GONZALES NAVAS, deceased.

At the Borough of Manhattan, City, County and State of New York and the Southern District of
270 New York, on the 11th day of April, 1927, comes Emma Gonzalez Navas, hereinafter termed the claimant, and makes oath and says:

FIRST.—That Marcos Gonzalez Navas died on the twentieth day of December, 1926, in the Hudson River opposite the Borough of Manhattan, City, County and State of New York, and within the County, State and Southern District of New York, of which City, County and State he was then a resident and left him surviving as his only heirs and next of kin his sisters, the said Emma Gon-

zalez Navas and Maria Elena Gonzalez de Gaitan, and on the 6th day of January, 1927, the said Emma Gonzalez Navas was granted letters of administration upon the goods, chattels and credits that were of the said Marcos Gonzalez Navas, deceased, by a Surrogate of the County of New York, in the State of New York, and by the said letters the said Emma Gonzalez Navas was and is duly authorized and empowered to institute and maintain any suit in admiralty.

272

SECOND.—Upon information and belief that the said Spencer Kellogg & Sons, Inc., hereinafter termed the petitioner, was at all the times hereinafter mentioned and still is a corporation organized and existing under and by virtue of the laws of the State of New York and having a principal office for the conduct of its business of manufacturing linseed oil and otherwise, at Number 100 East Forty-second Street, in the City, County and State and Southern District of New York.

THIRD.—Upon information and belief that the said petitioner Spencer Kellogg & Sons, Inc., at all 273
the times hereinafter mentioned owned, operated, managed, controlled and sailed upon the Hudson River between the Borough of Manhattan, City and State of New York, and Edgewater, in the State of New Jersey, a certain boat or launch, to wit, the "Linseed King," and employed the master and crew of said launch.

FOURTH.—Upon information and belief that on the 20th day of December, 1926, the said Marcos Gonzalez Navas being then employed by the said

petitioner, as a laborer in the works or factory of the petitioner situate at said Edgewater, and then residing in the Borough of Manhattan, City and State of New York, was a passenger on said launch on a voyage across the Hudson River from said Borough of Manhattan, City and State of New York to said Edgewater, in the State of New Jersey, and was being transported as such passenger on said launch across said river by the petitioner, which had contracted to transport him
275 safely and without negligence from said Borough of Manhattan to said Edgewater.

FIFTH.—Upon information and belief that at the time of said voyage on the 20th day of December, 1926, the said launch was not in a good or seaworthy condition as the petitioner and its officers and agents, and particularly its general manager who was also the master of said launch well knew and was particularly unsafe to navigate the waters of the Hudson River which were then turbulent, with a strong incoming tide meeting the current of the river, and full of swirling eddies and cross
276 currents and of large and small floes and thick pieces of ice floating and moving in the water.

SIXTH.—Upon information and belief that on the said twentieth day of December, 1926, the petitioner, well knowing the dangers and risks thereby incurred, but of which the passengers on said launch were ignorant and well knowing also the frail, poor and unseaworthy condition of said launch, sent the said launch on its said voyage with the result that said launch soon after leaving the New York shore was caught and carried in the

ice filled current upstream and was crushed and broken by and between said floes and pieces of ice, wrecked, capsized and sunk, and the said Marcos Gonzalez Navas being then a passenger on board said launch was by reason thereof killed and drowned, all of which occurred within the limits of the Southern District of New York.

SEVENTH.—Upon information and belief that said launch was sent by the petitioner upon said voyage on the 20th day of December, 1926, without a competent or sufficient crew and without a competent or duly licensed master, and without proper equipment and with unsafe steering apparatus and unseaworthy. 278

EIGHTH.—Upon information and belief the said launch upon her said voyage was by the petitioner and by the petitioner's procurement and with its consent, greatly overcrowded and carried passengers in number greatly exceeding the number which it might safely carry on any voyage, even in waters quiet and free from floating ice and greatly in excess of the number of passengers permitted by law to be carried, and that such over crowding of said launch increased the difficulty of properly navigating her, impeded the escape of her passengers when the launch was wrecked and their rescue, and caused or contributed to the said death of said Marcos Gonzalez Navas. 279

NINTH.—Upon information and belief that said launch upon her said voyage and when she was wrecked as aforesaid did not carry safe and proper life preservers sufficient in number for the number

280 of passengers carried, or as many safe and proper life preservers as required by law and that such, if any, life preservers as were then on said launch were unfit for use and so placed that they could not be obtained in time for use by the passengers; all of which was known to the petitioner and further impeded and prevented the said Marcos Gonzalez Navas from saving himself and contributed to causing his death.

281 TENTH.—Upon information and belief that the master or other person in charge of said launch when she was wrecked as aforesaid was, as the petitioner then knew or should have known, incompetent, unskillful, unlicensed and unauthorized by law to navigate said launch.

ELEVENTH.—Upon information and belief that the said Marcos Gonzalez Navas was a passenger on said launch, at the time it was wrecked and he was killed as aforesaid, at the order and request of the petitioner and that his safe transportation to and from his work was a part of the compensa-
282 tion agreed to be given said Marcos Gonzalez Navas by the petitioner.

TWELFTH.—Upon information and belief that the aforesaid death of the said Marcos Gonzalez Navas was solely caused by the fault and negligence of the petitioner, its agents, servants and employees and was not caused by or contributed to by any negligence on the part of the said Marcos Gonzalez Navas.

THIRTEENTH.—That at the time of his death the said Marcos Gonzalez Navas of the age of thirty-

eight years, was in good health and upon information and belief earned, as a laborer, at least the sum of Thirty-three Dollars per week.

FOURTEENTH.—That at the time of his death and for a long time prior thereto the said Marcos Gonzalez Navas was the sole support of his two said sisters and the four infant children of his sister Maria Elena.

FIFTEENTH.—That by reason of the premises the said claimant and the heirs and next of kin of the said Marcos Gonzalez Navas on whose behalf the claimant now makes claim against the petitioner, have sustained damages amounting to the sum of Twenty-five Thousand Dollars, and said claimant claims said sum from said petitioner. 284

EMMA GONZALEZ NAVAS.

Sworn to and subscribed before me
this 11th day of April, 1927.

E. BEERMAN, JR.,
Notary Public #111. 285
Com. expires March, 1929.

286 **Proof of Claim of Hilda M. Hicks.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her
287 engines, etc., for Limitation of Liability, Civil and Maritime.

Now comes Hilda M. Hicks, as duly qualified administratrix of the Estate of David Hicks, deceased, through the undersigned proctors, and in response to the monition issued out of this Court on the petition of Spencer Kellogg & Sons, Inc., to limit its liability for all claims arising out of the sinking of the "Linseed King" on or about December 20, 1926, makes claim against Spencer Kellogg & Sons,
288 Inc., and the "Linseed King," in a cause of damages for death, and respectfully alleges:

I.

That at all the times herein mentioned, the petitioner was and still is a corporation, organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business at No. 100 East 42nd Street, in the Borough of Manhattan, City, County and State of New York.

II.

That at all the times herein mentioned, the petitioner owned, managed, operated and controlled a boat or other class of water craft known as the "Linseed King."

III.

That at all the times herein mentioned, and for some time prior thereto, the petitioner owned, managed, operated and/or controlled a factory or 290 plant at Edgewater, New Jersey.

IV.

Upon information and belief, that at all the times herein mentioned, the petitioner maintained, operated and used the said "Linseed King" in connection with its business, and for the purposes of carrying its employees, prospective employees and other persons as passengers from the New York side of the Hudson River to New Jersey, and from the New Jersey side of the Hudson River to New York. 291

V.

That on or about the 20th day of December, 1926, claimant's intestate boarded the said "Linseed King" at or near the pier at 95th Street, New York City, at the invitation and request of the petitioner, its officers, agents, servants and employees, to proceed as a passenger to the New Jersey side of the Hudson River, to wit: Edgewater, New Jersey, for the purpose of working for the petitioner.

292 *Proof of Claim of Hilda M. Hicks.*

VI.

That in accordance with said invitation and request of the petitioner, its agents, servants and employees, the claimant's intestate did board the said "Linseed King" with a large number of other men.

VII.

That the said "Linseed King" while proceeding across the Hudson River on the aforesaid date, and
293 while en route to a place known as Edgewater, New Jersey, the said "Linseed King" sank, and claimant's intestate was submerged in the water, drowned, and died as a result thereof.

VIII.

Upon information and belief, that the said death by drowning was not in any way caused by or through any fault or negligence on the part of the deceased, but was due wholly and solely to the wanton and reckless negligence and carelessness on the part of the petitioner, its officers, agents and employees in the following respects,
294 among others, which will be shown at the trial of this case:

1. That the petitioner failed to provide claimant's intestate with a safe and proper means of transportation.

2. That the petitioner failed to provide claimant's intestate with a safe and seaworthy vessel.

3. That the said "Linseed King" was improperly constructed, and otherwise unseaworthy.

4. That the said "Linseed King" was unseaworthy, in that her steering gear was inadequate, worn and defective, and she was otherwise out of repair, and in need of repair.

5. That the said "Linseed King" was unseaworthy, in that she was not properly equipped, was improperly loaded and overloaded.

6. That the said "Linseed King" was loaded with a large number of men or employees beyond and in excess of her capacity, thereby, 296
and together with her unseaworthy condition as herein mentioned, endangered the life and limb of all those on board, including claimant's intestate.

7. That the said "Linseed King" was without a license, and without a licensed operator, and otherwise violated the steamboat inspection laws and the laws of navigation.

8. That the petitioner, its operator, master and other employees in control of the said "Linseed King" were negligent and careless in the manner of the operation and navigation 297
of the said "Linseed King," in that they invited and permitted an excessive number of men on board the said "Linseed King."

9. That the petitioner, its officers, agents and other employees, caused, permitted and otherwise suffered the "Linseed King" to undertake the aforesaid voyage on the Hudson River when said "Linseed King" was in an unseaworthy condition, as herein mentioned, and when the said river contained floating ice and other material, which made it extra-hazardous.

10. That the said "Linseed King" was not built or licensed for the purpose of carrying a

298 *Proof of Claim of Hilda M. Hicks.*

large number of passengers, and was not constructed or designed, and was not otherwise in a seaworthy condition for such service and in the condition of the river then prevailing.

11. That the petitioner, its officers and agents caused and permitted the said "Linseed King" to undertake the said fatal voyage when she was in an unseaworthy condition.

IX.

299 That the petitioner, its officers, agents and employees, knew or had reason to know the aforementioned facts; and the said conditions, circumstances, events, acts and the consequent disaster, which proximately caused, and as a result of which claimant's intestate lost his life, were known to and were within the privity and knowledge of the petitioner.

X.

That claimant's intestate left surviving him the following:

| *Name* | *Relationship* | *Address* |
|---|---|---|
| 300 Hilda M. Hicks, | Widow | 7428 Woodside Avenue, Elmhurst, L. I., N. Y. |
| Olga Hicks, | Daughter | 314 Mills St., Poughkeepsie, N. Y. |
| Emil Hicks, | Son | 3740 95th St., Elmhurst, L. I., N. Y. |
| Hilda Fitch, | Daughter | 2011 Berkshire, St., W. Toledo, Ohio. |
| Vera Phillips, | Daughter | 2011 Berkshire, St., W. Toledo, Ohio. |
| Nellie Hicks, | Daughter | 7428 Woodside Avenue, Elmhurst, L. I., N. Y. |
| Joyce Hicks, | Daughter | 7428 Woodside Avenue, Elmhurst, L. I., N. Y. |

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XI.

That claimant was duly appointed administratrix in the Surrogate's Court of the County of Queens, State of New York, on the 10th day of February, 1927, with power to prosecute this action.

XII.

That at all the times herein mentioned, there was and still is in force and effect a death statute under the laws of the State of New York and New 302
Jersey and of the United States, and that by virtue of the aforesaid statutes and amendments thereto, claimant has a cause of action for the death thus occasioned, and is entitled to recover, in addition thereto for the pain and suffering which the decedent suffered during the time of the disaster the further sum of Seventy-five Thousand Dollars ($75,000.00).

WHEREFORE, claimant presents this claim and prays that she be allowed damages in the amount of Seventy-five Thousand Dollars ($75,000.00); 303
that payment thereof be decreed, and that such other and further order may be made as will protect the rights of claimant as to the Court shall seem just and proper.

OELAND & KUHN,
Proctors for Claimant,
Office and Post Office Address,
#115 Broadway,
Borough of Manhattan,
City of New York.

(Verified by Hilda M. Hicks.)

304 **Claim of John Darco (Dominick Darco).**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her
305 engines, etc., for Limitation of Liability, Civil and Maritime.

Now comes John Darco, through his undersigned proctor, and in response to the monition issued out of this Court on the petition of Spencer Kellogg & Sons, Inc., to limit its liability for all claims arising out of the sinking of the "Linseed King" on or about December 20, 1926, makes claim against Spencer Kellogg & Sons, Inc., and the "Linseed King," in a cause of damages for injuries, and re-
306 spectfully alleges:

I.

That at all the times herein mentioned, the petitioner was and still is a corporation, organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business at No. 100 East 42nd Street, in the Borough of Manhattan, City, County and State of New York.

II.

That at all the times herein mentioned, the petitioner owned, managed, operated and controlled a boat or other class of water craft known as the "Linseed King."

III.

That at all the times herein mentioned, and for some time prior thereto, the petitioner owned, managed, operated and/or controlled a factory or plant at Edgewater, New Jersey. 308

IV.

Upon information and belief, that at all the times herein mentioned, the petitioner maintained, operated and used the said "Linseed King" in connection with its business, and for the purposes of carrying its employees, prospective employees and other persons as passengers from the New York side of the Hudson River to New Jersey, and from the New Jersey side of the Hudson River to New York. 309

V.

That on or about the 20th day of December, 1926, claimant boarded the said "Linseed King" at or near the pier at 95th Street, New York City, at the invitation and request of the petitioner, its officers, agents, servants and employees, to proceed as a passenger to the New Jersey side of the Hudson River, to wit: Edgewater, New Jersey, for the purpose of working for the petitioner.

310 *Claim of John Darco (Dominick Darco.)*

VI.

That in accordance with said invitation and request of the petitioner, its agents, servants and employees, the claimant did board the said "Linseed King" with a large number of other men.

VII.

That the said "Linseed King" while proceeding across the Hudson River on the aforesaid date, and
311 while en route to a place known as Edgewater, New Jersey, the said "Linseed King" sank, and claimant was precipitated into the water, and suffered from the effects of immersion and exposure to the elements, and was otherwise caused to sustain serious and severe injuries to his person, and claimant alleges, upon information and belief, that all of said injuries will be permanent.

VIII.

That claimant thereby became sick, sore, lame and disabled; has been and will be confined to his bed; has suffered and still suffers great pain and
312 agony; has been and will be prevented from working; has lost and will have to lose large sums of money which he otherwise would have earned; has paid out and will have to pay out large sums of money for his medicines and medical attention, and for his maintenance and cure, all to his damage in the sum of Fifteen thousand ($15,000) Dollars.

IX.

That the said injuries were not in any way caused by or through any fault or negligence on the part

of the claimant, but were due wholly and solely to the wanton and reckless negligence and carelessness on the part of the petitioner, its officers, agents and employees, in the following respects, among others, which will be shown at the trial of this case:

1. That the petitioner failed to provide claimant with a safe and proper means of transportation.

2. That the petitioner failed to provide 314
claimant with a safe and seaworthy vessel.

3. That the said "Linseed King" was improperly constructed, and otherwise unseaworthy.

4. That the said "Linseed King" was unseaworthy, in that her steering gear was inadequate, worn and defective, and she was otherwise out of repair, and in need of repair.

5. That the said "Linseed King" was unseaworthy, in that she was not properly equipped, was improperly loaded and overloaded. 315

6. That the said "Linseed King" was loaded with a large number of men or employees beyond and in excess of her capacity, thereby, and together with her unseaworthy condition as herein mentioned endangered the life and limb of all those on board, including claimant.

7. That the said "Linseed King" was without a license, and without a licensed operator, and otherwise violated the steamboat inspection laws and the laws of navigation.

316 *Claim of John Darco (Dominick Darco.)*

8. That the petitioner, its operator, master or other employees in control of the said "Linseed King" were negligent and careless in the manner of the operation and navigation of the said "Linseed King," in that they invited and permitted an excessive number of men on board the said "Linseed King."

9. That the petitioner, its officers, agents and other employees, caused, permitted and otherwise suffered the "Linseed King" to un-
317 dertake the aforesaid voyage on the Hudson River when said "Linseed King" was in an unseaworthy condition, as herein mentioned, and when the said river contained floating ice and other material, which made it extra hazardous.

10. That the said "Linseed King" was not built or licensed for the purpose of carrying a large number of passengers, and was not constructed or designed, and was not otherwise in a seaworthy condition, for such service and in the condition of the river then prevailing.

318 11. That the petitioner, its officers and agents caused and permitted the said "Linseed King" to undertake the said fatal voyage when she was in an unseaworthy condition.

X.

That the petitioner, its officers, agents and employees, knew or had reason to know the aforementioned facts; and the said conditions, circumstances, events, acts and the consequent disaster, which proximately caused, and as a result of which

claimant was injured, were known to and were within the privity and knowledge of the petitioner.

WHEREFORE, claimant presents this claim and prays that he be allowed damages in the amount of Fifteen thousand ($15,000) Dollars; that payment thereof be decreed, and that such other and further order may be made as will protect the rights of claimant as to the Court shall seem just and proper.

SILAS B. AXTELL,
Proctor for Claimant,
Office & P. O. Address,
11 Moore Street,
Borough of Manhattan,
City of New York. 320

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State of New York, }
County of New York, } ss.:

SILAS B. AXTELL, being duly sworn, deposes and says that he is the proctor for the claimant in the within proceeding; that he has read the foregoing claim and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. 321

The sources of deponent's knowledge and the grounds of his belief are communications had with claimant and reports received in reference to the proceeding hereinbefore set forth.

This verification is made by deponent rather than by claimant for the reason that the claimant is not now in the County of New York, upon information and belief.

SILAS B. AXTELL.

Sworn to before me this
30th day of April, 1927.

EDITH MCCORMICK,
323 Notary Public,
Kings County.
Kings Co. Clerk's No. 174, Reg. No. 9067.
N. Y. Co. Clerk's No. 179, Reg. No. 9128.
Term expires March 30, 1929.

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## Notation That Other Claims in Personal Injury Cases are Similar.

All other claims in personal injury cases not printed in full or referred to herein are similar to
324 the above claim of Dominick Darco (John Darco), except as to amount.

## Proof of Claim of Darnley Barker. 325

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| In the Matter<br>of<br>The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. | 326 |

State of New York,
City of New York,
County of New York, } ss.:

DARNLEY BARKER, a claimant in the above-entitled matter makes claim against the above-named Spencer Kellogg & Sons, Inc., and the said motorboat "Linseed King," as follows:

That on the 20th day of December, 1926, the said "Linseed King," while bound from the foot of 95th Street, North River, for the petitioner's plant at Edgewater, New Jersey, sank owing to the fault of said petitioner and its servants, agents or employees in charge of the said motor boat "Linseed King," and thereby this claimant, who was lawfully on the said vessel as an employee was cast into the waters of the Hudson River and sustained personal injuries as a result of the accident, in consequence of which he sustained and claims dam- 327

328 *Proof of Claim of Darnley Barker.*

ages in the amount of One Thousand ($1,000) Dollars, no part of which has been paid.

(sgd.) DARNLEY BARKER.

Sworn to before me this
9th day of April, 1927.

JAMES J. MCGUIRE,
Notary Public,
Queens Co. #2153.

329 N. Y. Co. Clk's No. 228, Reg. No. 8163.
Term expires March 30, 1928.

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The claim of Kenneth Norgrove is similar to the foregoing claim of Darnley Barker.

330

## Proof of Claim of William H. Ice. 331

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. 332

United States of America,
Southern District of New York,
City, County & State of New York, } ss.:

WILLIAM H. ICE, a claimant in the above entitled matter, makes claim against the above named Spencer Kellogg & Co., Inc., and the said motorboat "Linseed King" as follows:

That on the 20th day of December, 1926, the said "Linseed King" while bound from the foot of 95th Street, North River, for the petitioner's plant at Edgewater, New Jersey, sank through the fault of the said petitioner or servants, agents or employees in charge of the said motorboat "Linseed King" and thereby this claimant who was lawfully on the said vessel as an employee, was cast into the waters of the Hudson River and sustained personal injuries, being the result of the accident, and in consequence sustained and claims damages in the 333

334 *Proof of Claim of William H. Ice.*

amount of One Thousand ($1,000) Dollars, no part of which has been paid.

WILLIAM H. ICE.

Sworn to before me this
24th day of March, 1927.

META DIDSLUM,
Commissioner of Deeds,
N. Y. City.

335 N. Y. County No. 64, N. Y. Reg. No. 28019.
Term expires March 23rd, 1928.

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The claim of John Joseph Sullivan is similar to the foregoing claim of William H. Ice.

336

## Proof of Claim of Carl Bremer. 337

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc. 338

State of New York, } ss.:
County of New York, }

CARL BREMER, being duly sworn, deposes and says:

I am a resident of New York County, City and State of New York, and one of the persons cited to appear and give proof of claim before George V. A. McCloskey, Esq., in the above entitled matter. 339

On December 20, 1926, deponent was a resident of New York County, and a passenger on the Motorboat "Linseed King" at the time of her sinking set forth in the libel and petition. By reason of the said sinking, and as I am informed and verily believe, through the fault of said petitioner, Spencer Kellogg & Sons, Inc., or its servants or agents in charge of said motorboat, and without fault on my part, I was injured.

By reason of the above premises, and of said sinking, I was precipitated and thrown into the

340 *Proof of Claim of Carl Bremer.*

Hudson River, and caused to remain in the river for about an hour before rescued from drowning; suffered from fright and fear of death; was compelled to undergo medical treatment in an endeavor to cure myself of said injuries; was confined to the hospital, home and bed for a long period of time; suffered a severe shock to my nervous system; suffered from cold and exposure to the cold waters of the river, and was otherwise damaged, and am entitled to maintain an action
341 to recover for the injuries occasioned and hereby claim $10,000 as the amount of such damage, no part of which has been paid.

CARL BREMER.

Sworn to before me this
2nd day of April, 1927.

M. KANIGHER UDELL,
Comm. of Deeds,
New York City.

342

## Proof of Claim of Padro Mitchell. 343

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., for Limitation of and Exemption from Liability, as owner of the Motorboat "LINSEED KING," her engines, etc. 344

PADRO MITCHELL, as and for a claim against the above named Spencer Kellogg & Sons, Inc., and the Motorboat "Linseed King" without waiving or intending to waive his rights under a suit instituted by him in the Supreme Court, New York County and without admitting the right of the petitioner herein for limitation of liability, by Joseph & Demov, his attorneys, alleges:

FIRST.—Upon information and belief, that at all 345 times hereinafter mentioned, the above named Spencer Kellogg & Sons, Inc., was a domestic corporation.

SECOND.—Upon information and belief, that at all times hereinafter mentioned, the said Spencer Kellogg & Sons, Inc., maintained a plant, factory, or business at Edgewater in the State of New Jersey.

THIRD.—That prior to the 20th day of December, 1926, Padro Mitchell, the claimant herein and the

346 *Proof of Claim of Padro Mitchell.*

said Spencer Kellogg & Sons, Inc., entered into an agreement wherein and whereby for a consideration to be paid to him, the said claimant, duly agreed to enter into the employ of Spencer Kellogg & Sons, Inc., and the said Spencer Kellogg & Sons, Inc., hired the said Padro Mitchell, it being agreed by the parties hereto that such employment was to be at the Edgewater plant of the said Spencer Kellogg & Sons, Inc., or such other place or places as may from time to time be designated by the said
347 Spencer Kellogg & Sons, Inc.

FOURTH.—Upon information and belief that at all the times hereinafter mentioned, the above named Spencer Kellogg & Sons, Inc., was the owner of, managed, controlled and operated a certain boat known by the name of "Linseed King."

FIFTH.—Upon information and belief, the said Padro Mitchell alleges that at all times hereinafter mentioned, the above named Spencer Kellogg & Sons, Inc., used and employed such boat known as the "Linseed King" in transporting its employees
348 from the City of New York to its plant located at Edgewater, New Jersey.

SIXTH.—Upon information and belief, that the said boat "Linseed King" was at all times hereinafter mentioned, in charge of one John Rohweder, and that the said John Rohweder, was in the employ of the said Spencer Kellogg & Sons, Inc., and had been placed in charge of said boat as its captain and operator.

SEVENTH.—Upon information and belief, the said Padro Mitchell alleges that the said John Rohweder

at all times hereinafter mentioned, was an unlicensed pilot and captain, and that the fact that he was such unlicensed pilot and captain was known and within the knowledge of the defendant at the time of his employment and at all times herienafter mentioned.

EIGHTH.—That prior to the 20th day of December, 1926, and subsequent to the date of hiring of the said Patro Mitchell, by the said Spencer Kellogg & Sons, Inc., the said claimant was directed by the 350
said Spencer Kellogg & Sons, Inc., to be and appear and present himself at the West 96th Street pier, in the City of New York, and was further directed to board the steamer "Linseed King" at that place, and to proceed thereon to the plant of the said Spencer Kellogg & Sons, Inc., located at Edgewater, New Jersey.

NINTH.—That pursuant to such instructions, the said Padro Mitchell duly appeared at the West 96th Street pier, and did, pursuant to the instructions of the said Spencer Kellogg & Sons, Inc., duly board the steamer "Linseed King" for the purpose 351
of being transported to the place of business of the said Spencer Kellogg & Sons, Inc., at Edgewater, New Jersey.

TENTH.—That on the said 20th day of December, 1926, while the said steamer was proceeding towards Edgewater, New Jersey, and while the said Padro Mitchell was lawfully, legally, and pursuant to the instructions of said Spencer Kellogg & Sons, Inc., on board thereof, the said boat suddenly foundered and sunk in the Hudson River, which is a navigable water within the United States.

352 *Proof of Claim of Padro Mitchell.*

ELEVENTH.—That the foundering and sinking of said boat was due entirely to and by reason of the carelessness and negligence of the said Spencer Kellogg & Sons, its agents and servants, and was caused by reason of the fact that the captain or person in charge thereof was an unlicensed pilot and operator, was unfit and incapable of performing the duties of a captain and operator of a boat, and by reason of the careless, negligent and unsafe manner in which the said boat was being operated
353 by the persons in charge thereof, and by reason of the overcrowding of said boat and overloading of the same beyond its capacity and contrary to the rules and regulations of maritime laws of the United States in such cases made and provided, and by reason of the unseaworthiness of said boat, of all of which the said Spencer Kellogg & Sons, Inc., had due and full knowledge, and all of which occurred without any fault or negligence on the part of the claimant herein.

TWELFTH.—That as a result of the foundering and sinking of said boat, the claimant herein was
354 thrown into the waters of the Hudson River, was immersed therein, and compelled to remain in said water for some time, and by reason of the exposure, he sustained severe injuries to various parts of his body, was greatly shocked, and his nervous system seriously injured.

THIRTEENTH.—That by reason of such injuries, the claimant herein was confined to his bed for a long period of time, and alleges that such injuries sustained by him are of a lasting and permanent character, and that by reason thereof, he may be

unable to continue his usual vocation with the same efficiency as prior to the date that he sustained such injuries, and may not be able to continue his vocation and will continue to suffer for a long period of time because of such injuries, all to his damage.

FOURTEENTH.—That as a result of such injuries, the claimant was compelled to and did expend large sums of money and will be compelled to expend further sums of money for medical attendance and medicines, and has been and will be for a long time unable to do any work or to continue his vocation, by reason of which he has lost and will continue to lose large sums which he otherwise would have earned. 356

FIFTEENTH.—That by reason of the terms herein, the plaintiff has been damaged in the sum of Twenty-five Thousand Dollars ($25,000.00).

WHEREFORE claimant demands judgment against the said Spencer Kellogg & Sons, Inc., in the sum of Twenty-five Thousand Dollars ($25,000.00) together with the costs and disbursements and prays that his claim may be allowed and adjudged in the amount above stated. 357

JOSEPH & DEMOV,
Attorneys for Claimant,
Office and Post Office Address,
No. 1431 Broadway,
Manhattan Borough,
New York City.

(Verified by Padro Mitchell.)

358 **Objection to Claim.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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| In the Matter<br>of<br>The Petition of SPENCER KELLOGG & SONS, INC., as owner of the<br>359 Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. | 94/237. |

Sirs:

PLEASE TAKE NOTICE that the petitioner herein hereby objects to the claim filed in this proceeding by or on behalf of Vera Alexander, as administratrix of the Estate of James Alexander, deceased, and prays that the said claim may be disallowed and excluded unless established by further legal
360 proof on notice to the proctors for the petitioner and otherwise in the manner provided by law.

Dated, New York, N. Y., May 10, 1927.

Yours, &c.,

BIGHAM, ENGLAR & JONES,
Proctors for Petitioner,
Office & P. O. Address,
No. 64 Wall Street,
New York City.

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To:

ALEXANDER GILCHRIST, JR., Esq.,
Clerk.

GEORGE V. A. MCCLOSKEY, Esq.,
Commissioner,
120 Broadway,
New York City.

SILAS B. AXTELL,
Proctor for Claimant,
11 Moore Street,
New York City.

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**Notation that the Objections of the Petitioner to the Additional Claims are not Printed in Full.**

The objections of the petitioner to all of the claims filed in this proceeding being similar to the objection to the claim of Vera Alexander, as administratrix of the Estate of James Alexander, deceased, their reprinting here is dispensed with.

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364 **Opinion of Judge Hazel, Dated March 15, 1928.**

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the
365 Motorboat "LINSEED KING," her engines, etc. for Limitation of Liability, Civil and Maritime.

BIGHAM, ENGLAR & JONES (D. Roger Englar, L. J. Matteson, O. D. Duncan, Chauncey I. Clark, Henry Dieck, Charles W. Hagen and Stanley R. Wright, of Counsel), New York City, for Petitioner.

SILAS BLAKE AXTELL (Elizabeth Robinson, of Counsel), New York City, for Claimants.

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LESTER HAND JAYNE (Arthur L. Obre, of Counsel), New York City, for Claimants Roberts, Sims, McEachin and Varouaxaki.

KURZMAN & FRANK (Samuel B. Seidel of Counsel), New York City, for Claimant Millicent Ifill, as Administratrix of McBean Ifill.

MARSH, SPENCER & MARSH (C. C. Marsh and R. T. Marsh, of Counsel), New York City, for Claimant Emma Gonzales Navas.

OELAND & KUHN (Edward J. S. Rook, of Counsel), New York City, for Hilda Hicks, as Administratrix of David Hicks, Claimant.

HAZEL, District Judge:

This is proceeding for limitation of liability of the sole owner, Spencer Kellogg & Sons, Inc., of the gasoline launch "Linseed King," under Admiralty Rules 54 and 56, and Sec. 4283, R. S.

On December 20th, 1926, at about 6:10 o'clock in the morning, a gasoline launch with an enclosed 368
cabin, known as the "Linseed King," left Edgewater, N. J., in charge of her pilot and operator, Rohweder, to cross the Hudson River to the 95th Street Pier, Manhattan, a distance of about 1.35 miles or 7,140 feet, on a customary trip (somewhat earlier than the regular morning trips) to take aboard workmen as passengers and convey them to petitioner's plant at Edgewater. Some of the passengers were regular employees, while others were applicants for temporary employment as laborers to unload a linseed ship which had arrived at petitioner's dock, and who assembled at
the pier at the request of petitioner appearing in 369
advertisements in the New York World. The wind at the time of departure from the Jersey side was southwest, with a tide about to turn. It was dark. The running lights of the boat were lighted. There was no ice perceived by the pilot on the Jersey side, but near the New York shore of the river there was ice through which the launch passed to the pier. Men, waiting, hastily boarded the launch, as many as possible, thirty-eight in all, seating themselves on the long seats in the cabin, one seat on each side, while the other stood in the

aisle, none remaining outside of the cabin. The exact number of men who boarded the boat is in dispute. A number remained behind on the pier, intending to cross over on the succeeding trip. Petitioner claims the number boarding the boat did not exceed seventy-five, while claimants say that fully 86 crowded into the cabin. The boat started back promptly at 6:30 o'clock. It was still dark. The river in the vicinity of the pier, extending out about 500 feet, contained floating ice
371 in pieces of various sizes, through which the boat moved at slow speed, the ice scraping and bumping her. Upon reaching a short distance beyond midstream, the launch, running in clear water at a speed not exceeding 7 or 8 miles per hour, struck a heavy floating object—no doubt an ice floe—with such force that her port bow was stoven in, the opening being approximately 19 inches long and 8¾ inches wide. What followed was indeed a most appalling occurrence. The water poured in rapidly, the motor was stopped, windows were shattered, a panic ensued, and the "Linseed King" sank in about two minutes. About 29 survivors
372 saved themselves by clinging to the launch, some standing on her deck, others leaping into the river and swimming to ice cakes which supported them until they were rescued. Many of the saved suffered severely from exposure. The remainder, unable to leave the enclosed cabin, were drowned. Most of the bodies (27 in number), when the boat was raised, were taken from the cabin, 8 from the river, and 23 bodies, claimants contend, were not recovered. Much testimony has been taken on both sides comprising 2213 typewritten pages; 119 witnesses testified, and many exhibits were introduced in evidence.

The "Linseed King" was licensed as a vessel under 20 tons by the Department of Commerce on April 15th, 1922. Her gross tonnage was 10.75, net tonnage 7, length over all 45′, breadth 10.0′, and depth 4′6″. (The license erroneously states length 42.5, depth 4.0.) She was used as a ferry, navigating between petitioner's plant and the pier already mentioned, and transporting employees across the river, who lived in New York. She was originally constructed in 1919 of cedar planking, as an open launch. Her length was 35′, beam 10′, 374
but in 1922, 10′ were added to her length. Although in daily and nightly use, for ferrying workmen to and from the plant, she had encountered no other mishaps. In her earlier construction she was provided with a canvas cabin, curtained at the sides with glass windows which buttoned at the bottom, and in March, 1925, a pilothouse was constructed forward of the cabin, the floor being a few inches below the level of the main deck and 2½ feet higher than the cabin deck. There was no partition between the cabin and the pilothouse, merely a pipe rail extending partly across, behind the wheelsman. At the after end there were on 375
each side two doors 22″ wide, at the top of a few steps leading from the cabin deck. The length of the cabin was 29½′, aside from the pilothouse of 4′, and, after deducting the space of the seats on both sides, there remainded an aisle about 5½′ wide, or, as Barrett testified, 63 sq. feet and a small margin for the men, who were not seated, to stand in. There was also a companionway 29″ wide at the rear of the cabin which had a hatch over the top and a two-section door hinged at the sides—a few steps leading thereto on the inside.

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The forward door opened outwardly, while the rear door opened inwardly. In the latter part of 1926, nine glass windows on each side, like those in a street or railway car, though having somewhat smaller openings, were substituted for the canvas curtains. Two forward windows and two windows aft on each side were hinged at the bottom, while the side windows, in the middle at the top, had a brass chain 14″ long secured to the upper end of the sash by a light staple, which allowed the win-
377 dows to partly open inwardly for ventilation. It was not difficult to remove the staples to enable taking out the windows, which were 15″ x 22″, 4′ above the level of the deck, if anyone for any reason, under ordinary circumstances, desired to do so. She had no bulkhead or buoyancy tank, and the strip of metal sheathing 1½″ thick was used solely to protect her from wear and tear. There were aboard about 83 life preservers and three life rings, held by battens on the ceiling, and besides two piles of life preservers were kept at the ends of the long cabin seats close to the rear door.

The exhibit photographs disclose lengthwise
378 breaks, cuts and chafes on the starboard side of the boat, and puncturing of the port bow. When she was cut and chafed on her starboard side does not definitely appear. Both breaks, no doubt, were caused by going through ice floes and by impact, but the witnesses agree that the hole on her port bow, through which volumes of water came into the boat, caused her to founder. Since she did not transport passengers for hire, she was not subject to regulation by the U. S. Local Inspectors, aside from the requirement (Motor Act of 1910) that life preservers be carried for every person on board.

In its brief, petitioner stated that it does not attempt to shield itself because of any inapplicability of any existing law, but asserts that the "Linseed King" in general strength, fitness and seaworthiness, compared with boats duly licensed to carry passengers for hire on the river; that she operated as a ferry, and was therefore not limited by statute as to the number of persons carried (R. S. 4464). The value of the craft was negligible.

The two paramount questions presented are (1) whether claimants, who were cited to appear and 380
answer, have proven any negligence or breach of duty in operation, management and maintenance of the "Linseed King," and (2) if so, has her owner proven that such negligence or breach of duty was without knowledge or privity on its part. These questions will now be discussed.

The burden of proof rests upon claimants to establish liability, while the onus probandi is on the petitioner for exemption of liability, to show that it was without privity or knowledge of the facts upon which liability is based. The John H. Starin, 191 Fed. 800; Scow 84-H, 296 Fed. 427.

By their answer claimants deny any right to 381
limit liability. It is affirmatively alleged that the "Linseed King" was unseaworthy for the particular purpose for which she was used; that she was not properly equipped for the trip in view of the ice in the river, or for a time when ice might be expected therein; that she was operated without a license in violation of the steamboat inspection law; and, moreover, that her owner permitted her to be overloaded with human beings, thus endangering their lives.

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No difference exists, as to unseaworthiness, between private and common carriers, or as to whether a cargo consists of merchandise or passengers, since, in each instance, a seaworthy boat must be used. The "Linseed King" must have been fit to carry her passengers for the particular transportation, for, if she lacked reasonable fitness, staunchness, and sufficiency, she was unseaworthy. It was truly said that contact with an ice floe, berg, or cake in the winter season in the Hudson River
383 was not due to an inevitable accident. Regardless of the vessel's strength and size, or the purpose for which she was navigated, she was required to exercise reasonable care in construction and equipment to avoid injury to her passengers. A high degree of care and precaution was necessary in her navigation to avoid dangers from contact with ice. The rule is that reasonable fitness or seaworthiness of a vessel must be tested, as said in the Benjamin Noble, 244 Fed. 95, by the facts and circumstances of each particular case, and her capacity and tonnage of her cargo may be vital factors. Hence claimants herein must show that at the beginning
384 of the return trip, the "Linseed King" was unseaworthy for the particular purpose for which she was used.

Her asserted unseaworthiness is based on various incidental items of testimony, but, summarizing it, I find that it is not satisfactorily shown that she was unsuitable for carrying passengers in general, or that she must be condemned for unfitness as to the several items to which reference is now made. She was strongly built, and although not provided with tight bulkheads, the testimony of local inspectors and experienced witnesses proves that few

gasoline motorboats carrying passengers in river transportation for hire, are so provided. She was without metal sheathing, but, I find that sheathing is ordinarily applied to boats of her type for preservation and not for protection from impacts. She was not designed to carry the workmen amid broken ice, or when ice appeared in the river, and therefore, a steel shoe covering her stem was not required. She did not leak and was not subject to leaking more than wooden boats ordinarily leak, and her buoyancy and stability under ordinary con- 386
ditions were adequate. She was admittedly under the control, at the time of the mishap, of an experienced motorboat pilot, whose skill and experience was the subject of inquiry and was tested before his employment by responsible agents of petitioner. He alone was in charge at the time of the mishap. Her certificate of registration required a crew of one man—but, as to this phase, I will comment later on. The alteration of her tonnage after substitution of wooden window frames for canvas curtains did not materially increase her burden, and therefore I think this point may be passed without definite decision. (See The Messenger, 168 Fed. 387
908.) Testimony suggesting a defectiveness of the clutch is not regarded as substantial, for Rohweder and Balz, superintendent of transportation, swore than it worked properly prior to the catastrophe. The undisputed evidence of various witnesses, including Rohweder, Stover, the works manager, and Balz shows that instructions were given her operators that running her when there was ice was forbidden; and she would be laid up, when ice appeared, until spring. Rodweder also testified that Balz was his immediate superior and he

was told by him and by Stover, the manager of the plant, not to run when ice appeared, in heavy fog, or in stormy weather, and, moreover, not to carry any more men than there were life preservers. Stover had received such instructions from Aldrich, the secretary of petitioner.

Considerable testimony on both sides was given as to whether there was ice in the river before the day of the mishap, and it becomes important to inquire and determine whether the "Linseed King"
389 was in fact negligently permitted to run after its appearance, and at a time when its appearance reasonably might be anticipated, and perils guarded against by abandonment of the trips. Ordinarily, ice in the winter months, forming in the Hudson River on the flats near Tarrytown and points above, is broken up by the wind, temperature, and the tide, and is generally broken up at ebb tide. It then runs down the river in large floes or cakes, usually averaging two miles an hour, and later part of it, at the last of the ebb tide and first of the flood, floats back upstream. (See testimony of Smith, p. 1362, rec.) That there was ice in the
390 Hudson River on the day before the disaster, and prior thereto, is shown by numerous creditable witnesses. It will suffice to refer to a few. The witness Lang, formerly night operator of the launch, in his deposition states that he saw light ice below 95th Street on his two Sunday morning trips, the day preceding the accident, but he made no report of it to his superiors, since it did not interfere with his operations; while Cooper, one of the regular workmen, says that on his trips to the plant on Saturday he saw plenty of ice in the river on the New York side, and a little ice on

Sunday. That there was freezing temperature, as low as 11 degrees, at various times beginning December 2nd, and continuing to the 7th, followed by warmer to the day of the mishap, appears by the weather reports in evidence; while Captain Kearney testified that he saw ice in the river a week prior to December 20th. Oliver, superintendent of the Cornell Steamboat Company, testified that he encountered difficulty with ice in towing on December 4th. Smith, pilot of the fireboat Mitchell, testified that there was ice in the slip, 392
well churned up from drifting down the river, two or three days before the accident. Policemen Lennon and O'Toole, patrolling the locality of pier 95, both declared that they saw ice floes a week previous to the accident; while Quinn showed log entries of ice a few miles above Edgewater on December 18th; and Cook, manager of Dyckman Street Ferry, and Peterson saw ice two or three days before the occurrence. Pollard, dock master, swore that he saw ice in the river on the New York side at times prior to the accident. In the light of such testimony, it is indeed to be wondered why Stover, Rodweder and Balz did not forsee that it 393
was perilous to continue the trips. Rohweder was negligent, in my opinion, in taking passengers on board, knowing that he would have to pass through ice before reaching the clear, and that doing so was fraught with danger. Stover and Balz knew, or should have known, of the ice fluctuations in the river, due to wind, current and tides. And the fact that the launch was not regarded by her owner as seaworthy to withstand ice conditions may be assumed from the instructions that had been given to cease her trips on its appearance. The prob-

ability of ice appearing, in view of the temperature, should have prompted direct instructions to abandon the trips. It is not enough to say that Stover had no knowledge of the appearance of ice in the river; that he scanned the river and saw none, or that it was mush ice, or that he was not informed by Lang that he had encountered ice on his two trips, or that he was unaware of ice on other days prior to the accident. The conditions of the weather were known to him and should have
395 been taken into account (Texas & Gulf S. S. Co. v. Parker, 263 Fed. 864) and should have warned him of the danger. It was a danger that should have been anticipated by the exercise of diligence and reasonable care. The Jean Bart, 197 Fed. 1002; The Southwark, 191 U. S. 1. The credibility of the witnesses testifying to the presence of ice is not successfully challenged. They have no interest in the outcome of the litigation, and their recollection of their observations is to be given greater weight than that of those who say that they did not see any ice. Seaworthiness, as well said in The Benjamin Noble, supra, is a relative term and in-
396 volves inquiry into the conditions under which a vessel is used together with her capacity in connection with the nature or tonnage of the cargo. Mere seaworthiness in ordinary weather and conditions is manifestly not the sole factor in estimating a vessel's fitness. She must be fit to carry her passengers, freed from anticipated perils, and ferrying in winter when ice fields are to be expected, not only involved terrible loss of lives, as the result shows, but required, on the part of the owner's responsible agents, the exercise of the utmost care to afford protection. The situation is not similar

to an ocean steamship speeding in a fog, as was the case in LaBourgogne, 210 U. S. 95. There it was ruled by the Supreme Court that speed in a fog could not be determined by set rules and must largely be left to the discretion of the master and her officers. It is different as to the appearance of ice in the Hudson River where a duty rested upon the manager of the corporation, under whose supervision the boat was operated, to guard against ice perils and generally such dangers as were apt to arise in the usual course of her short 398
ferrying trips. The Virginia, 264 Fed. 986 (Affd. 278 Fed. 877). Both Stover and Balz were in constant communication with her movements. They could not silently allow her operator to use his sole discretion in continuing his runs when they knew, or should have known, that the boats safety was menaced. They could not supinely rest upon verbal instructions previously given him to lay up the boat, for Rohweder, who spoke to Stover about ice conditions, swears that they (Stover and Johannis) were to decide when the ice conditions became such that the boat was to be laid up. Stover knew
399
she was not built to withstand impacts from heavy ice, and, knowing these things, he ignored the weather reports, made no inquiries of Lang, or of anyone. There was negligence in using her under such conditions when her return trip started. Her owner has not proven that it was without privity and knowledge within the meaning of Sec. 4283 of the Revised Statutes, as it has been construed and interpreted. Eastern S. S. Corp. v. Great Lakes D. & D. Co., 256 Fed. 497; Texas & Gulf S. S. Co. v. Parker, supra; the Virginia, 264 Fed. 986 (affd. 278 Fed. 877) (cert. denied 257 U. S. 659); Par-

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sons v. Empire T. Co., 111 Fed. 202. It is uniformly ruled that privity or knowledge of the officers of a corporation or their managing agent, is the knowledge and privity of the owner. The Republic, 61 Fed. 109; see also In re Sanford Ross, Inc., 204 Fed. 248; In re Jeremiah Smith, 193 Fed. 395, and The Teddy, 226 Fed. 448.

There was another act of negligence contributory, no doubt, to the loss sustained, namely the large number of passengers who were permitted to
401 board the boat and enter the cabin, the only place (there being no outside deck space) where they could be. It may be assumed that it was believed that the "Linseed King" had the right to carry as many persons as she had life preservers, and at times she, no doubt, carried that many. The evidence preponderatingly shows that fully 75, perhaps a few more, boarded the "Linseed King." Sixty-eight have been accounted for, and petitioner concedes that there may have been 70. Claimants insist, as already pointed out, that about 24 bodies were not recovered and that it may fairly be inferred that a total of 87 were crowded into the
402 cabin. However, the testimony as to the larger number is somewhat conjectural, and I think a conservative total number, based on evidence and the probabilities, was approximately 78. When it is considered that many of the men wore overcoats or heavier clothing than is ordinarily worn at other seasons of the year, it is fairly inferable that the persons seated were close together, while those who were in the aisle were uncomfortably crowded to such an extent that there was difficulty in leaving the cabin by either door. The evidence justifies the conclusion that the men, in their extremity, were

unable to use life preservers and leave either by the doors or windows. Permitting the overcrowding of the cabin was an act of negligence and must be condemned, and, if it was with the knowledge and privity of the corporation or the manager of its plant, the right to limit liability must be denied. (See The Valencia, 110 Fed. 221, and The Annie L. Vansciver, 161 Fed. 640). In the last mentioned case, the ship owner was permitted by the local steamboat inspector to crowd the vessel beyond her capacity, and the Court ruled that, as the owner 404
had knowledge that the vessel was habitually overcrowded and that there was likelihood of dangers to passengers, it could not escape liability for fail ure to make adequate provision for preventing too many persons from coming aboard. That a vessel may become unseaworthy and unfit for use because of her overcrowded condition, has many times been decided, and knowledge or privity, imputable to the owner, estops exemption from liability under the statute. Weishaar v. Kimball, 128 Fed. 397; The Benjamin Noble, supra, affd. 244 Fed. 95, and see s. c. 249 U. S. 334. While overcrowding was
not the proximate cause of the disaster, it, never- 405
theless, was contributory to the drowning of a least some of the men in the cabin, for no one will doubt that, if the boat had not been overcrowded, quite a number, how many of course is uncertain, would not have gone down with the foundered boat. It was a concurrent cause, and the owner, in my opinion, was not absolved from liability, even though not responsible for other causes. Wilmington, etc. v. Fulton, 205 U. S. 75; Delaware, etc. v. Petrowski, 250 Fed. 565.

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Petitioner's experts, in opposition to overcrowding, base their opinion on mathematical calculations, testified that the boat could conveniently carry 80 to 90 persons, allotting to each person 1.88 sq. feet of floor space on a basis of 82 persons inside the cabin, while each man would have 2 sq. feet of floor space on a basis of 75 passengers; and, accordingly, it is contended that she was not overcrowded even though she contained a number of men at least equal to the number of life preservers
407 carried by her. Claimants' experts, in their calculations, reached a contrary conclusion. However, I disregard the expert testimony on this point and give credence to the unimpeached evidence of many survivors. They substantially testified that the men in the cabin were crowded or jammed so closely together that there was interference with their movements. Such testimony is entitled to greater weight than testimony based on computation and calculation of available area or space, especially when it is corroborated by other facts and circumstances, namely by evidence that men were standing on the steps of the pilothouse near
408 the front passageway and close around the engine. In this connection it was also proven by Custom House records that motorboats navigating on the river under government regulation, are given a carrying capacity of 40 passengers on boats 41 to 45 feet in length, gross tonnage 15 to 26, and, in a few instances, 67 with a corresponding number of life preservers, depending upon her construction and size. Although Rohweder swore than he had no difficulty in controlling the men as they came aboard; that there was always a policeman on the pier to assist him in restraining the men from com-

ing aboard whenever he deemed it necessary to do so, still, when it is considered that in the discharge of his duties he was required, upon reaching the pier, to control the boat; that it was dark; that he did not put out lines but held the boat to the pier with the motor, heading her downstream into the tide, it is difficult to believe that he was able to prevent men from hastening into the cabin and overcrowding the boat. No one was requested by him to prevent overcrowding. There was also evidence of overcrowding on prior occasions when a 410
seed ship arrived for unloading. At such times a larger number of laborers usually answered the advertisements, and approximately 80 to 90, including regular employees, were taken aboard. This occurred frequently, according to the witnesses Johnson, Lang, Kratovil, Dingle and others. That a few, who so testified, were discharged employees is insufficient reason for discrediting their testimony in view of its corroboration by others. Stover's presumed knowledge and privity of overloading at such times was also, in view of his agency, the knowledge and privity of the owner. He testified that he never saw more than 75 men 411
carried, and that he had disapproved of as many as that being carried; that he relied entirely upon the competency of Rohweder. Inasmuch, however, as Rohweder, Lang and Dingle, alone, on their respective runs, not only had charge of the boat, but also the control of the number of men coming aboard, I think the contention has merit that stover knew, or should have known, of the general overcrowding on these occasions which followed from the advertised solicitation of workmen to report at the pier.

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It is next urged in opposition to limitation of liability that the "Linseed King" had an insufficient crew. No one was particularly designated to aid Rohweder to prevent overcrowding, either on the occasion in question, or at other times. His duties were to operate the boat, to look out, handle lines, tend the engine which was located amidships in the cabin, and, as said, supervise the boarding of the passengers. He said that invariably there was a regular workman aboard who
413 voluntarily helped him; and, moreover, that Stover told him he could have a man any time he wanted one, but not one was actually assigned to aid in navigation or prevent overcrowding. Stover swore that on Sunday afternoon, he instructed McHale, the dock foreman, to have Rohweder make an extra trip on Monday morning; and McHale swore that Stover instructed him that whenever there was a seed ship in to "give a man to the (motorboat) captain, to help him and keep those men inside the boat." The quoted instruction appears to have been general and did not specifically apply to the trip in question. In any event, to detail an extra
414 man to keep the men inside the boat, did not constitute a sufficient crew for the proper operation of the boat. Nor does the license (Ex. S), issued by the Bureau of Navigation, stating "number of crew 1," operate to exonerate petitioner from blame for insufficiency of crew in view of the fact that it was manifest that a larger crew was necessary.

It is next contended that claimants who have brought actions for damages—many being administrators of intestates who were drowned—and claimants who have answered the petition, cannot

assert their claims in this proceeding; that claims of dependents came within the provisions of the New Jersey Workmen's Compensation Law, and, unless petitioner is exonerated from liability, the question of its liability for damages or for compensation under the state statute must be decided at this time. On claimants' behalf it is urged that the single issue presented by the petition to which answer has been made, is whether the benefits of the limitation statute were rightly invoked, and questions of damages in the regular course of 416
procedure should be submitted and decided in the first instance by the special commissioner. The petition, after alleging the disaster for which it disclaims liability, states that actions at law and libels for damages in large amounts in various jurisdictions have been brought, including claims for compensation filed with the New Jersey Compensation Bureau, and that other actions at law and proceedings for enforcement of claims are in contemplation. On filing an ad interim stipulation, such actions and proceedings were enjoined.

Having determined that the petition must be 417
denied, the proceeding must be continued in this Court under the monition for the purpose of passing upon the rights of all claimants filing their claims. The question of procedure at the outstart sounded interesting and important, since there existed considerable uncertainty in relation thereto (see Benedict on Admiralty, 5th Ed. Vol. I, Secs. 488-512-516), which has now been definitely removed. In The Titanic, 204 Fed. 295, Judge Hough, after discussing the various adjudications applying to the subject, reached the conclusion that a petition for limitation of liability confers

exclusive jurisdiction upon the admiralty court not only to determine petitioner's rights to the benefit of the statute, but also, upon denial of such right, to enforce rights of claimants in full. He refused to modify the injunction order restraining suits in other courts, and further said that the only reason for a claimant not wishing to come into the proceeding was a desire for a jury trial, which, however, "was not a part of the right," but merely an incident to the remedy. This view has recently
419 been approved by the Supreme Court, Chief Justice Taft writing the opinion, in Hartford Accident Co. v. Sou. Pacific, 273 U. S. 207, wherein it was clearly decided that a limitation of liability proceeding does not terminate because limitation is denied, but the Court may proceed to adjudicate all claims against the vessel and her owner, both in rem and in personam by reason of the res which petitioner has surrendered to the custody of the Court: "Whether," the learned Court said, "their claims are strictly in admiralty or not."

Since proctors for claimants assert that they desire an opportunity to show that the New Jersey
420 Workmen's Compensation Law, termed by them an elective act, is inapplicable, and that further testimony is necessary to establish its inapplicability, the case must take its usual course before the special commissioner, without deeming it necessary to determine the question, at this time, as to the application of the Workmen's Compensation Act, or as to whether the rights of claimants have been properly asserted by dependents or administrators.

At the hearing I expressed doubt as to whether the limitation statute was applicable to the type

of boat used to transport the workmen or passengers, across the river to the petitioner's plant, but my attention is drawn to The Luvina, 1927 A. M. C. 27; Warnken v. Moody, 22 Fed. (2d) 960; The Miramar (unreported), and The Oneida, 282 Fed. 238, which involved houseboats and motorboats and wherein it was decided that limitation acts might be invoked by their owners. It is therefore ruled that the "Linseed King" was a vessel within the meaning of the act.

My conclusion is that the evidence preponderat- 422
ingly shows that fault and negligence were committed in the navigation of the "Linseed King," in consequence of which injuries were sustained by survivors and numerous lives lost; and, furthermore, that petitioner has not shown that the disaster was without its privity and knowledge. On the contrary, I find the evidence sufficient to warrant the determination that the occurrence was with the privity and knowledge of petitioner's superintendent and manager, under whose supervision the boat was operated, and whose privity and knowledge is imputable to the corporation.

An interlocutory decree may be entered on notice. 423

Dated, March 15th, 1928.

JOHN R. HAZEL,
U. S. D. J.

424 **Interlocutory Decree.**

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 26th day of March, 1928.

Present—Hon. JOHN R. HAZEL, U. S. D. J.

425

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

426 A petition having been filed herein on the 4th day of March, 1927, by Spencer Kellogg & Sons, Inc., as sole owner of the Motorboat "Linseed King," her engines, etc., claiming the benefit of the Limitation of Liability provided for in the third and fourth sections of the Act of Congress entitled "An Act to limit the liability of shipowners and for other purposes," passed March 3rd, 1851, and now embodied in Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the statutes amendatory thereof and supplemental thereto, and also contesting the liability independ-

ently of the Limitation of Liability claimed under such acts for any loss, damage, injury or destruction, resulting from the sinking of the Motorboat "Linseed King" on December 20, 1928, while engaged in carrying persons from the foot of 95th Street, North River, Manhattan, to Edgewater, N. J., or out of any other matter connected with the voyage on which the said Motorboat "Linseed King" was then engaged, and this Court having thereafter, on or about March 5, 1927, issued a monition against all persons claiming damages for any loss, 428
destruction, damage or injury occasioned by said alleged disaster, or in connection with the voyage on which the Motorboat "Linseed King" was then engaged, requiring such persons to appear before this Court and make due proof of their respective claims before George V. A. McCloskey, Esq., as Commissioner, on or before April 12, 1927, and public notice of such monition having been duly given as required by law and the practice of this Court, and the said Commissioner having duly made and filed his report bearing date of May 16, 1927, and thereafter, pursuant to further orders of this Court authorizing the filing nunc pro tunc of 429
certain claims therein specified, made and filed his reports supplemental thereto, wherein and whereby it appears that certain claims therein enumerated and no others have been presented pursuant to such monition, and the petitioner having filed its objections to such claims, praying that the same may be disallowed and excluded unless established by further legal proof on notice to proctors for the petitioner and otherwise in the manner provided by law, and a number of said claimants having also filed answers to the petition contesting the peti-

430 *Interlocutory Decree.*

tioner's claim both for exemption from and limitation of liability, and this cause having duly come on to be heard upon the pleadings and proofs of the respective parties, and having been tried by this Court on January 12th to February 1st, 1928, inclusive, and the petitioner having contended in open Court that claimants who have brought actions for damages and claimants who have answered the petition cannot assert their claims in this proceeding; that claims of dependents come within the
431 provisions of the New Jersey Workmen's Compensation Law; and claimants having urged that the single issue presented by the petition, to which answer has been made, is whether the benefits of the limitation statute were rightly invoked, and questions of damages in the regular course of procedure should be submitted and decided in the first instance by the Special Commissioner; and the causes having been duly argued and submitted by Messrs. Bigham, Englar & Jones, proctors for the petitioner, and by Silas Blake Axtell, Lester Hand Jayne, Kurzman & Frank, Marsh, Spencer & Marsh, and Oeland & Kuhn, proctors for the several
432 claimants, and due deliberation having been had, and the Court having filed its opinion in writing deciding that fault and negligence were committed in the navigation of the "Linseed King," in consequence of which injuries were sustained by survivors and lives were lost, and that the occurrence was with the privity and knowledge of the petitioner;

Now, on motion of Silas Blake Axtell, Lester Hand Jayne, Kurzman & Frank, Marsh, Spencer & Marsh, and Oeland & Kuhn, proctors for claimants herein, it is

433

ORDERED, ADJUDGED AND DECREED, that the said petitioner, Spencer Kellogg & Sons, Inc., is not entitled to exemption from all liability or to limitation of liability as claimed by it in its petition, and that the claimants do have and recover of and from the petitioner and its stipulators, their damages, by reason of the matters and things alleged in their respective claims so far as the same may constitute valid claims against the petitioner arising out of the voyage upon which the Motorboat "Linseed King" sank on December 20, 1926, and it is further

434

ORDERED, that the above entitled cause be and hereby is referred to Myer Nussbaum, Esq., as Commissioner to take further proof that may be offered as to the amount and validity of all claims filed herein, and the applicability or inapplicability thereto of the New Jersey Workmen's Compensation Law, and to report thereon to this Court with the evidence taken before him, together with his opinion, with all convenient speed, and it is further

ORDERED, that all claimants who have filed claims herein do appear before the aforesaid Commissioner and make proof of their respective claims, and that hearings before such Commissioner may be brought on by any party in interest by notice of four days, and it is further

435

ORDERED, that the injunction of this Court contained in the order for monition dated March 5, 1927, be and hereby is continued in full force and effect, and that the beginning or prosecution or determination of any and all claims, suits, actions or legal proceedings of any nature or description

whatsoever except in the above entitled proceeding in respect of any claim arising or resulting from the sinking of the Motorboat "Linseed King" on December 20, 1926, while engaged in carrying persons from the foot of 95th Street, North River, Manhattan, to Edgewater, N. J., or out of any other matter connected with the voyage on which the said Motorboat "Linseed King" was then engaged, be and they hereby are, stayed and restrained until the entry of final decree in this proceeding.

437

JOHN R. HAZEL,
U. S. D. J.

438

## Stipulation as to Report of Myer Nussbaum, Commissioner. 439

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. 440

IT IS HEREBY STIPULATED AND AGREED by and between the proctors for the respective parties hereto that the printed report of Myer Nussbaum, Commissioner, containing 148 pages need not be reproduced in the record on appeal, but may be transmitted to the Circuit Court of Appeals in its original form and may be used by either party on the argument of said appeal with the same force and 441 effect as if said printed report were included in the foregoing transcript of record. This stipulation is to form a part of and is to be printed in the record.

Dated, April , 1931.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Petitioner.

ELIZABETH ROBINSON AND LUCIAN V. AXTELL,
Proctors for Claimants.

442 **Claimants' Exceptions to the Report of the Commissioner.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

443

EXCEPTIONS TO THE REPORT OF THE COMMISSIONER.

Claimants, represented by the undersigned proctors, hereby except to the report and findings of the Special Commissioner, on the following grounds:

444

1. In that the award made in each and every claim is wholly inadequate and insufficient.

2. In that the Commissioner, in making the awards entirely disregarded the amount of recoveries which have been allowed by courts in similar cases.

3. In that he failed to allow interest from the date of the respective decedents' deaths, contrary to the provisions of the Death Statute of the State of New York, and the New York Decedent's Estate Law.

And on the further grounds set forth in the following claims:

CLAIMS BY WIDOWS ASSERTING THEIR RELATIONSHIP BY VIRTUE OF A CEREMONIAL MARRIAGE:

4. James Alexander, deceased.

a. In that he found that the decedent's earnings could never exceed $1200 a year.

b. In that he found that the decedent's contributions to his wife and child would not exceed $800 a year. 446

c. In that he found that the claimant did housework during her husband's lifetime.

d. In failing to allow the amount paid and due for the funeral and burial expenses of the decedent.

6. Charles D. Burns, deceased.

a. In that he found that the decedent would not increase his earnings during the more than 35 years of life expectancy. 447

b. In that he found that the decedent's earnings were but $28.96 per week.

c. In failing to make proper and sufficient allowance for the pecuniary loss which the four infant children suffered by reason of the decedent's death.

d. In that he failed to take into consideration the ages of the widow and children as of the date of decedent's death.

448 *Claimants' Exceptions to Report of Commissioner.*

7. Samuel Daniels, deceased.

a. In that he found that the decedent's earnings were but $26.99 per week.

b. In that he found that the contributions to the claimant would not exceed $700.

c. In that he failed to allow and to add to the award the funeral bill of $259.75.

d. In that he failed to take into consideration that the age of the widow was 47 years
449 as of the date of decedent's death.

9. Domingo DeMeza, deceased.

a. In that he failed to make any award in this claim.

b. In that he found that there was no valid marriage between claimant and decedent.

c. In that he found that the Acta Matrimonia, executed May 18th, 1926, was a forgery.
450

d. In that he found that there was no valid marriage between claimant and decedent, according to the laws of the State of New York.

e. In that he entirely disregarded and failed to give due and proper effect to the evidence and the law.

f. In that he failed to examine the evidence and the law which established the validity of the marriage, but arbitrarily ac-

cepted and adopted verbatim the statements of petitioner's counsel, irrespective and without regard to the evidence.

10. Frank Marques, deceased.

a. In that he failed to make any proper allowance for an increase in the decedent's earnings in the more than 35 years of life expectancy.

b. In that he found that the contributions 452
of the decedent to the widow would not exceed $600 per year.

c. In that he found that the decedent's earnings would not exceed $28 per week.

d. In that he failed to allow and to add to the award the funeral bill of $593.41, paid by the widow.

11. Fernando Martin, deceased.

a. In that he failed to make proper allowance for decedent's increased earnings. 453

12. Adolphus Mathias, deceased.

a. In that he found that the decedent would not increase his earnings in the 36 years of life expectancy.

b. In that he found that the decedent's earnings would not exceed $27.71 per week.

c. In that he found that the contributions to the widow and two infant chillren would not exceed $900 per year.

454 *Claimants' Exceptions to Report of Commissioner.*

d. In that he failed to make proper and sufficient allowance for the pecuniary loss which the children sustained by reason of the decedent's wrongful death.

13. Carlos Morales, deceased.

a. In that he found that the contributions to his widow and two infant children would not exceed $900 per year.

455 b. In that he found that decedent would not increase his earnings in the nearly 38 years of life expectancy.

c. In that he found that the decedent's earnings were but $28.80 per week.

d. In that he found that the age of the widow was 26 instead of 24 years.

15. George Nemetz, deceased.

a. In that he found that the decedent would not increase his earnings during the 37 years of life expectancy.

456 b. In that he found that the decedent's contributions to the widow would not exceed $700 per year.

c. In that he failed to allow and to add to the award the funeral bill of $586.60.

d. In that he failed to make any or proper allowance for the pecuniary loss which the child has suffered by reason of decedent's death.

16. Uriah Pusey, deceased.

a. In that he found that the decedent's contributions to the widow and five infant children would not exceed $800 per year.

b. In that he found that decedent would not increase his earnings during the 32 years of life expectancy.

c. In that he found that the decedent was employed by the petitioner at the rate of 48 cents an hour. 458

d. In that he failed to make any or proper allowance for the pecuniary loss which the five infant children suffered by reason of decedent's death.

e. In that he failed to allow and add to the award the funeral expenses of $300.

f. In that he found that the ages of the children at the time of the decedent's death ranged from one year to eleven years, instead of 3 months, 2½ years, 5½ years, 7½ years and 9½ years. 459

17. Clifford Rawlins, deceased.

a. In that he found that the contributions to the widow would not exceed $600 per year, contrary to the evidence.

b. In that he failed to make any allowance for the pecuniary loss which the child suffered by reason of the decedent's death.

460 *Claimants' Exceptions to Report of Commissioner.*

18. John Benjamin Samuels, deceased.

a. In failing to make proper allowances for decedent's increase of earnings.

b. In that he found that decedent's earnings were but $26 per week.

c. In that he found that the contributions to the widow would not exceed $700 per year.

d. In that he found that the age of the
461 widow was 35 instead of 33 years.

CLAIMS BY ALLEGED COMMON-LAW WIVES:

21. In that the Commissioner was prejudiced against common-law marriages and arbitrarily failed to make any award where the marriage was not celebrated by religious or civil ceremony, contrary to the evidence and the law.

22. In that he failed to examine and give proper effect to the evidence and the law which established the validity of common law mar-
462 riages, but accepted verbatim the statement of petitioner's counsel, without regard to the evidence.

And on the further ground as set forth in the following claims:

23. Juan Castro, deceased.

a. In that the award of $3,000 is inadequate.

b. In that he failed to make any award for the benefit of the widow-claimant.

c. In that he found that there was no valid marriage between decedent and claimant.

d. In that he found that claimant was married to one "Gregorio."

e. In that he found that the attorneys told Manuel Castro to testify that claimant was the wife of the decedent.

24. Joseph Hamilton, deceased. 464

a. In that he failed to make any award.

b. In that he found that there was no valid marriage between decedent and claimant.

c. In that he found that claimant never openly asserted that she was the wife of the decedent.

25. Fred Sumner, deceased.

a. In that he failed to make any award for the benefit of the widow and infant child. 465

b. In that he found that there was no valid marriage between claimant and decedent.

c. In that he found that the child, Margaret Sumner, was not the lawful issue of any marriage between decedent and claimant.

27. Nathaniel Wisdom, deceased.

a. In that he failed to make any award to the widow-claimant.

466 *Claimants' Exceptions to Report of Commissioner.*

b. In that he found that there was no valid marriage between claimant and decedent.

c. In that he found that the relationship between claimant and decedent was meretricious.

d. In that he found that claimant earned more money than the decedent.

e. In that he found that the age of the
467 decedent was 34 instead of 30 years.

f. In that he found that the age of the widow-claimant was 24 instead of 22 years.

CLAIMS BY PARENTS AND COLLATERAL RELATIVES:

28. Ernest Boyer, deceased.

a. In that he failed to make any allowance for the loss which the sister suffered in being deprived of decedent's contributions to her support.

468 30. David H. Clarke, deceased.

a. In that he found that the decedent's earnings were but $28 per week.

b. In that he failed to find that the decedent would increase his earnings during the 35 years of life expectancy.

c. In that he found that the decedent was a common laborer.

d. In that he found that the decedent's contributions would not exceed $250 per annum.

e. In that he found that the age of the decedent's mother was 68 years instead of 65, and decedent's father 56 instead of 54 years.

31. Thomas Coyle, deceased.

a. In that he found that there was no physical reason for the sister's inability to work.

b. In that he found that the decedent was 39 years of age instead of 37. 470

c. In that he found that there was no evidence that the decedent supported the sister.

d. In that he found that the funeral bill of $740 was unreasonable.

e. In that he allowed but $275 toward the funeral expenses.

36. Victor Kreminsky, deceased.

a. In that he failed to make any allowance for the damages which the decedent's sister sustained by reason of decedent's wrongful death. 471

b. In that he failed to find that the decedent would increase his earnings during his life expectancy.

c. In that he found that the age of the decedent's father was 66 years instead of 63.

38. Juan C. Munoz, deceased.

a. In that he found that the contributions to decedent's parents would not exceed $200 per annum.

472 *Claimants' Exceptions to Report of Commissioner.*

b. In that he limited decedent's earnings to $28.64 per week.

c. In that he failed to make any allowance for decedent's increase in earnings during the 39 years of life expectancy.

39. Eladio Ortiz, deceased.

a. In that he found that the contributions to decedent's mother would not exceed $400 per year.

473

b. In that he failed to make any allowance for decedent's increase in earnings.

c. In that he limited decedent's earnings to $25.86 per week.

41. Carlie C. Thigpen, deceased.

a. In that he found that the decedent's contributions would not exceed $400 per annum.

b. In that he found that decedent's father's age was 68, instead of 66, and the mother's age 70, instead of 68.

474

44. Louis Ortiz.

a. In that he found that the pneumonia which claimant contracted was not due to the disaster.

b. In that he found that the pneumonia from which defendant suffered did not develop on December 24th, 1926.

c. In that he held that the phlebitis and the varicose veins were not due to the disaster.

d. In that he failed to make any allowance for the decedent's lost earnings due to the disaster.

45. That all of the Commissioner's findings, as herein set forth, were contrary to the evidence and the law.

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ELIZABETH ROBINSON AND
LUCIAN V. AXTELL,
Proctors for Claimants,
Office & P. O. Address,
15 Moore Street,
Borough of Manhattan,
City of New York.

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Claimants' exceptions relating to the following claims have been omitted from the record for the reason that they relate to the amount of damages: 477

Joseph Bassnett; Roy Amlaw; Thomas Davis; Andrew S. Murphy; Paul Saul; John Turner; John Brennan; John Hartman; James Heap; John W. Kakos; Anthony Warren McGoldrick; Bert Ramsland; Harry Gold; Fred Ludwig; David Hicks; Samuel Griffith; Eric Martin; Henry A. McEachin; George Sims; Helen Roberts.

478 **Claimants' Exceptions to the Report of the Commissioner.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the
479 Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

EXCEPTIONS TO THE REPORT OF THE COMMISSIONER:

Claimants, represented by the undersigned proctor, hereby except to the report and findings of the Special Commissioner, on the following grounds:

4. Frank Eberle, deceased.

480 a. In that he failed to make proper and sufficient allowance for the pecuniary loss that the children suffered by reason of the decedent's wrongful death.

b. In that he found that the widow invested money in the rooming house.

c. In that he failed to allow and too add to the award the funeral bill of $277.50, paid by claimant.

d. In that he found that the contributions to the widow and two children would not exceed $1200 per year.

e. In that he failed to allow interest from the date of decedent's death, contrary to the provisions of the Death Statute of the State of New York, and the New York Decedent's Estate Law.

5. Balfour Corriette, deceased.

a. In holding that the sister was not entitled to recover under the New York Decedent Estate Law for the loss suffered in being deprived of decedent's contributions to her support. 482

b. In failing to make any or proper allowance for the decedent's increase in earnings.

c. In that he failed to allow interest from the date of decedent's death, contrary to the provisions of the Death Statute of the State of New York, and the New York Decedent's Estate Law.

PERSONAL INJURY CLAIMS:

6. Bernard Lange.

a. In that he failed to make any award, contrary to the evidence and the law. 483

b. In that he found that the release executed by claimant was valid.

8. That all of the Commissioner's findings, as herein set forth, are contrary to the evidence and the law.

SILAS B. AXTELL,
Proctor for Claimants,
Office & P. O. Address,
11 Moore Street,
Borough of Manhattan,
City of New York.

484 **Petitioner's Exceptions to the Report of the Special Commissioner.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

485 The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

The petitioner, Spencer Kellogg & Sons, Inc., hereby excepts to the report of the Special Commissioner on the following grounds in respect of the claims listed below:

I. As to the claims of:

486 (1) Vera Alexander,
(2) May A. Amlaw,
Lillian Mae Amlaw,
(3) James Keyes,
(5) Lena Burns,
(6) Julia Daniels,
Mary Slaughter,
(7) Bessie Davis,
(9) Anna Eberle,
(11) Hilda Hicks,
(16) Marie Marques,

*Petitioner's Exceptions to Report of Special Commissioner.* 487

(17) John A. O'Melia,
Luis E. Feliu,
(18) Celestine Matthias,
(19) Josephine Morales,
(20) Annie Murphy,
(21) Maria Varga Nemetz,
(22) Adina Victoria Pusey,
(23) Laura Rawlins,
(24) Helen Roberts,
(25) Edith Samuels, 488
(26) Paul Lieneck,
(27) Leola Turner,
(28) In re Castro (Delosantos),
(38) Raymond Boyer,
(40) Joseph Cassidy,
Albert E. Kane,
Administrator,
(41) Catherine Connolly,
(42) Angelina Corriette,
(43) James Coyle,
(44) Michael Dobransky,
(48) Robert R. Bell, 489
(50) John Kakos,
(51) Frank Labiak,
(53) Adolfo G. Dominguez,
(54) Emma Gonzales Navas,
(55) Eladio Ortiz,
(56) Nils Ramsland,
(57) Marion B. Thigpen,
(59) Darnelly Barker,
(60) Paul Boots,
(61) Carl Bremer,
(64) Aaron Cooper,
(65) Dominick Darco,

490 *Petitioner's Exceptions to Report of Special Commissioner.*

(66) Felipe Durate,
(67) Harry Gold,
(68) William Ice,
(69) Junius Johnson,
(72) Frederick Ludwig,
(73) Padro Mitchell,
(75) Louis Ortiz,

and as to each such claim separately.

491 (A) In that the Special Commissioner did not find that the rights of the said claimants were governed by the Workmen's Compensation Law of the State of New Jersey (Chapter 95, Laws of 1911, State of New Jersey, as amended).

(B) In that the Special Commissioner did not find that the said claimants were not entitled to recover because these claimants are not the parties entitled to compensation under the said Workmen's Compensation Law of the State of New Jersey.

492 (C) In that the Special Commissioner did not find that the said claimants were entitled to recover only the amounts fixed as compensation under the said Workmen's Compensation Law of the State of New Jersey.

(D) In that the Special Commissioner fixed the damages of the said claimants in amounts greater than the amounts fixed and allowed by the said Workmen's Compensation Law of the State of New Jersey, as shown by the following schedule:

*Petitioner's Exceptions to Report of Special Commissioner.* 493

| Commissioner's Number | Name of Employee | Commissioner's Award | Award Computed Under New Jersey Workmen's Compensation Law |
|---|---|---|---|
| 1 | James Alexander, | $10,000.00 | $9,993.00 |
| 2 | Roy Amlaw, | 12,000.00 | 7,902.00 |
| 3 | Joseph Bassnett, | 10,000.00 | 3,370.00 |
| 5 | Charles D. Burns, | 15,000.00 | 11,833.00 |
| 6 | Samuel Daniels, | 5,000.00 | 3,083.00 |
| 7 | Thomas Davis, | 4,000.00 | 3,083.00 |
| 9 | Frank Eberle, | 11,000.00 | 3,083.00 |
| 11 | David Hicks, | 7,500.00 | 3,503.00 |
| 15 | Henry McEachim, | 8,000.00 | 3,083.00 |
| 16 | Frank Marques | 8,000.00 | 3,083.00 |
| 17 | Fernando Martin, | 15,000.00 | 4,193.00 |
| 18 | Adolphus Matthias, | 12,000.00 | 8,860.00 |
| 19 | Carlos Morales, | 12,000.00 | 9,656.00 |
| 20 | Andrew S. Murphy, | 5,000.00 | 1,795.00 |
| 21 | George Nemetz, | 8,000.00 | 5,520.00 |
| 22 | Uriah Pusey, | 15,000.00 | 11,396.00 |
| 24 | Alfred Roberts, | 14,000.00 | 9,267.00 |
| 25 | John B. Samuels, | 7,500.00 | 3,083.00 |
| 26 | Paul Saul, | 4,000.00 | 3,083.00 |
| 27 | John Turner, | 10,000.00 | 7,620.00 |
| 28 | John Castro, | 3,000.00 | 1,616.00 |
| 31 | Eric Martin, | 2,000.00 | 1,267.00 |
| 32 | George Sims, | 2,500.00 | 1,616.00 |
| 33 | Fred Sumner, | 2,000.00 | 1,267.00 |
| 38 | Ernest Boyer, | 1,600.00 | 150.00 |
| 40 | David H. Clarke, | 2,500.00 | 150.00 |
| 41 | Thomas Anthony Connolly, | 2,500.00 | 1,615.00 |
| 42 | Balfour Corriette, | 2,500.00 | 150.00 |
| 43 | Thomas Coyle | 2,775.00 | 150.00 |
| 44 | Joseph Dobransky, | 2,000.00 | 150.00 |
| 48 | James Heap, | 4,000.00 | 883.00 |
| 50 | John W. Kakos, | 4,000.00 | 709.00 |
| 51 | Victor Kreminsky, | 2,000.00 | 1,128.00 |
| 53 | Juan C. Munoz, | 2,500.00 | 1,267.00 |
| 54 | Marcus G. Nayas, | 2,500.00 | 150.00 |
| 55 | Mario Ortiz, | 2,500.00 | 1,277.00 |
| 56 | Bert Ramsland, | 1,500.00 | 150.00 |

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495

496 *Petitioner's Exceptions to Report of Special Commissioner.*

| Commissioner's Number | Name of Employee | Commissioner's Award | Award Computed Under New Jersey Workmen's Compensation Law |
|---|---|---|---|
| 57 | Carlie C. Thigpen, | 2,500.00 | 2,121.00 |
| 59 | Darnelly Barker, | 1,000.00 | 170.00 |
| 60 | Paul Boots, | 750.00 | 333.00 |
| 61 | Carl Bremer, | 500.00 | 0 |
| 64 | Aaron Cooper, | 500.00 | 170.00 |
| 497 65 | Dominick Darco, | 500.00 | 221.00 |
| 66 | Felipe Durate | 500.00 | 102.00 |
| 69 | Junius Johnson, | 500.00 | 0 |
| 74 | Kenneth Norgrove, | 500.00 | 0 |
| 75 | Louis Ortiz | 500.00 | 51.00 |

(E) In that the Special Commissioner fixed the damages of the claimants, listed in paragraph (D) above, instead of finding that the New Jersey State Workmen's Compensation Board had exclusive jurisdiction to fix the amount due, if any.

II. As to all claims.

498 (A) In that the Special Commissioner failed to take into consideration the fact that the earnings of men employed as common laborers, would decrease in later years due to the increasing infirmities of age.

(B) In that he failed to take into consideration that the damages recoverable under the New York Death by Wrongful Act Statute (Sec. 132, Decedent's Estate Law) are limited to the pecuniary injuries to the persons for whose benefit the action is brought.

III. Claim of Vera Alexander (1):

(A) In that although the evidence shows clearly that the deceased did not contribute in excess of $350.00 per year to his family, the Special Commissioner has awarded damages on the basis of an annual contribution of $800.00 per annum.

(B) In that the pecuniary loss to the widow and children as shown by the evidence and computed 500
in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $4,000.00, the Commissioner has awarded damages in the amount of $10,000.00.

IV. Claim of May A. Amlaw, and Lillian Mae Amlaw (2).

(A) In that the pecuniary loss to the next of kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $6,000.00, the Commissioner has awarded dam- 501
ages in the amount of $10,000.00.

V. Claim of James Keyes (3).

(A) In that the Special Commissioner has found that Joseph Bassnett lost his life as a result of the sinking of the "Linseed King."

(B) In that the Special Commissioner has failed to take into consideration the uncontradicted testimony to the effect that the body which had been

502 identified at the morgue as that of Joseph Bassnett, was in fact the body of Clifford Rawlins.

(C) In that, although the Special Commissioner has found that the widow of Joseph Bassnett died on July 19, 1929, and that the pecuniary loss of the said widow should not be considered subsequent to that date, the Special Commissioner had disregarded these facts in fixing his award.

503 (D) In that the Special Commissioner has failed to take into consideration that the children of Joseph Bassnett, with the exception of the two youngest, were self-supporting.

(E) In that, although there is no credible testimony as to contributions by the deceased to his family, the Special Commissioner has arbitrarily found that his contribution to his family would not have exceeded $900.00 per annum.

(F) In that the pecuniary loss to the next of
504 kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $2,500.00, the Special Commissioner has awarded damages in the amount of $10,000.00.

VI. Claim of Bessie Davis (7).

(A) In that the Special Commissioner has found that Thomas Davis, alleged to be the husband of Bessie Davis, lost his life as a result of the sinking of the "Linseed King," although there is no evidence to support this finding.

*Petitioner's Exceptions to Report of Special Commissioner.* 505

(B) In that the testimony is undisputed that the Thomas Davis who was employed by Spencer Kellogg and who was alleged to have been lost as a result of the sinking of the "Linseed King," was not in fact the Thomas Davis to whom the claimant, Bessie Davis, was married.

(C) In that the Special Commissioner failed to find that the claimant herein, Bessie Davis, sustained no pecuniary loss as a result of the death 506
of Thomas Davis, the deceased referred to in these proceedings.

VII. Claim of Hilda Hicks (11).

(A) In that although the pecuniary loss to the next of kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $3,500.00, the Commissioner has awarded damages in the amount of $7,500.00.

VIII. Claim of Millicent Ifill (13). 507

(A) In that the Special Commissioner found that the deceased was contributing to his family the sum of $800.00 per annum, although the evidence shows clearly that his contribution to his family was not in excess of $300.00 per annum.

B) In that although the pecuniary loss to the next of kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in

508 *Petitioner's Exceptions to Report of Special Commissioner.*

excess of $5,000.00, the Commissioner has awarded damages in the amount of $10,000.00.

IX. Claim of Marie Marques (16).

(A) In that the Special Commissioner has found that Frank Marques lost his life as a result of the sinking of the Motorboat "Linseed King."

509 (B) In that the Special Commissioner has found that Frank Marques and Frank Martin both resided at 435 Eastern Parkway, Brooklyn, although the claimant herein testified that she never resided with Frank Marques at that address.

(C) In that the Special Commissioner has based his finding that Frank Marques was lost in this disaster, solely on the uncorroborated testimony of the interested claimant herein.

X. Claim of John A. O'Melia and Luis E. Feliu (17).

510 (A) In that, although the evidence in this case is to the effect that the deceased contributed to his family not in excess of $67.00 per year, the Special Commissioner has found that a contribution of $600.00 per year to the wife would be a fair estimate.

(B) In that the Special Commissioner has failed to take into consideration that in the three years during which the deceased was living in America, his contributions to his family in Chile had steadily decreased.

511

(C) In that although the pecuniary loss to the next of kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $1,000.00, the Special Commissioner has awarded damages in the amount of $15,000.00.

XI. Claim of Celestine Matthias (18).

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(A) In that, although the evidence is to the effect that the contributions of the deceased to his family were not in excess of $500.00, the Special Commissioner has found that a fair contribution to his family would not exceed $900.00 per year.

(B) In that although the pecuniary loss to the next of kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $4,000.00, the Special Commissioner has awarded damages in the amount of $12,000.00.

513

(C) In that, although the evidence is to the effect that the contribution of the deceased to his family was not in excess of $500.00 per year, the Special Commissioner has found as a fact that his contribution to his family was about $900.00 per year.

XII. Claim of María Varga Nemetz (21).

(A) In that, although the evidence is to the effect that the deceased contributed to his widow not in excess of $20.25 per year, the Special Commissioner has found that his contribution to his family on the basis of earnings proven would not exceed $700.00 per annum.

514 *Petitioner's Exceptions to Report of Special Commissioner.*

(B) In that the Special Commissioner has based his findings as to the annual contribution of the deceased to his family on the annual earnings of the deceased, and has disregarded the evidence as to his actual contribution to his wife who resided in Czecho-Slovakia.

(C) In that the pecuniary loss to the next of kin as shown by the evidence and computed in ac-
515 cordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $1,000.00, the Special Commissioner has awarded damages in the amount of $8,000.00.

XIII. Claim of Adina Victoria Pusey (22).

(A) In that, although the evidence shows that the deceased did not contribute to his family in excess of $400.00 per annum, the Special Commissioner has found as a fact that his average contribution to his family was in the amount of $800.00 per annum.

516 (B) In that although the pecuniary loss to the next of kin as shown by the evidence and computed in accordance with the provisions of the New York State Death by Wrongful Act Statute was not in excess of $5,000.00, the Special Commissioner has awarded damages in the amount of $15,000.00.

XIV. Claim of Laura Rawlins (23).

(A) In that the Special Commissioner found that the deceased Clifford Rawlins lost his life in this disaster, although there is no evidence in the

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record of his having been on the "Linseed King" at the time of the disaster.

(B) In that the Special Commissioner based his findings that Clifford Rawlins lost his life in this disaster on the testimony of Laura Rawlins to the effect that she had not seen him since the disaster, although it is clearly shown that she had not seen him for some time previous to the disaster.

518

XV. Claim of Angelina Corriette (42).

(A) In that the Special Commissioner has found that the parents of Angelina Corriette are entitled to an award, although the uncontradicted evidence is to the effect that her parents were not the parents of the deceased Balfour Corriette.

(B) In that the Special Commissioner failed to take into consideration the records of the marriage and of the birth of the children of Louis Lionel Corriette, and the testimony of James Trotter, which established clearly that Balfour Corriette was not the legitimate son of Louis Lionel Corriette.

519

(C) In that the Special Commissioner has found that the deceased, before his death, contributed to the support of his mother and father, although the uncontradicted evidence in the record is to the effect that he did not so contribute.

XVI. Claim of James Coyle (43).

(A) In that the Special Commissioner has based his findings to the effect that Thomas Coyle lost

520 *Petitioner's Exceptions to Report of Special Commissioner.*

his life as a result of this disaster solely on the testimony of the interested claimant, Nellie Coyle, to the effect that she had not seen him since the date of the disaster.

XVII. Claim of John Kakos (50).

(A) In that the Special Commissioner has found that John W. Kakos lost his life as a result of the sinking of the "Linseed King," although it appears
521 from the claimant's own testimony that John W. Kakos had paid his bill at the Mills Hotel on the afternoon of December 20, 1926, which was after the sinking of the "Linseed King."

(B) In that the Special Commissioner found that William Kenny, John William Kenny, and John K. Kakos, are identical.

(C) In that the Special Commissioner based his findings that John W. Kakos lost his life in this disaster solely on the fact that the body of this man was found on March 31, 1927, over three months
522 after the disaster.

XVIII. Claim of Mario Ortiz (55).

(A) In that the Special Commissioner found that Eladio Ortiz lost his life as a result of the sinking of the "Linseed King," although there is no credible testimony to the effect that this man was in fact on board the "Linseed King" at the time of the disaster.

*Petitioner's Exceptions to Report of Special Commissioner.* 523

XIX. Claim of Nils Ramsland (56).

(A) In that the Special Commissioner found that Bert Ramsland lost his life as a result of the sinking of the "Linseed King," although there is no credible testimony to the effect that this man was in fact on board the "Linseed King" at the time of the disaster.

XX. Claim of Marion B. Thigpen (57). 524

(A) In that the Special Commissioner found that Carlie C. Thigpen lost his life as a result of the sinking of the "Linseed King," although there is no credible testimony to the effect that this man was in fact on board the "Linseed King" at the time of the disaster.

(B) In that the Special Commissioner found that Carlie C. Thigpen and C. Victor, the latter an employee of Spencer Kellogg, were identical.

Dated, New York, N. Y., July 21, 1930. 525

Yours, etc.,

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526 *Petitioner's Exceptions to Report of Special Commissioner.*

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**Petitioner's Supplemental Exceptions.** 529

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. 530

In addition to the exceptions heretofore filed herein and dated July 21, 1930, the petitioner Spencer Kellogg and Sons, Inc., excepts to the report of the Special Commissioner herein, on the following grounds in respect of the claims listed below:

I. As to the claims of: 531

(15) Nora McEachin,
(31) Mary Martin,
(32) Geneva Sims,
(33) Virginia Sumner,
(74) Kenneth Norgrove,
(76) Robert L. Proven

and as to each such claim separately.

(A) In that the Special Commissioner did not find that the rights of the said claimant were governed by the Workmen's Compensation Law of the

532 *Petitioner's Supplemental Exceptions.*

State of New Jersey (Chapter 95, Laws of 1911, State of New Jersey, as amended).

(B) In that the Special Commissioner did not find that the said claimants were not entitled to recover because these claimants are not the parties entitled to compensation under the said Workmen's Compensation Law of the State of New Jersey.

(C) In that the Special Commissioner did not find that the said claimants were entitled to re-
533 cover only the amounts fixed as compensation under the said Workmen's Compensation Law of the State of New Jersey.

(D) In that the Special Commissioner fixed the damages of the said claimants in amounts greater than the amounts fixed and allowed by the said Workmen's Compensation Law of the State of New Jersey, as shown by the following schedule:

534

| Commissioner's Number | Name of Employee | Commissioner's Award | Award Computed Under New Jersey Workmen's Compensation Law |
|---|---|---|---|
| 67 | Harry Gold | $750.00 | $186.00 |
| 68 | William Ice | 500.00 | 0 |
| 72 | Frederick Ludwig | 500.00 | 170.00 |
| 73 | Padro Mitchell | 300.00 | 0 |
| 76 | Robert Proven | 500.00 | 34.00 |

(E) In that the Special Commissioner fixed the damages of the claimants, listed in paragraph (D) above, instead of finding that the New Jersey State Workmen's Compensation Board had exclusive jurisdiction to fix the amount due, if any.

*Petitioner's Supplemental Exceptions.* 535

Dated, New York, N. Y., July 22, 1930.

Yours, etc.,

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To: 536

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New York City.

ELIZABETH ROBINSON and
LUCIEN V. AXTELL,
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LESTER HAND JAYNE,
27 William Street,
New York City. 537

CHARLES KENNEDY,
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538 **Opinion by Judge Patterson, Dated December 17, 1930.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| In the Matter of The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability. | A. 94/237. |

539

PATTERSON, D. J.:

This is a limitation of liability proceeding under section 4283 of the Revised Statutes. It comes before me on exceptions to a commissioner's report.

On December 20, 1926, the "Linseed King" sank in the Hudson River. Many lives were lost. The survivors managed in one way or another not to be drowned but suffered from exposure. The "Linseed King" was a launch owned and operated by Spencer Kellogg & Sons, Inc., which had a manufacturing plant at Edgewater, New Jersey. Many of the men employed there came from New York City. The launch was used to carry them from a pier on the New York side to the place of work on the New Jersey side. At the time in question, the launch carried not only employees but also men who made the trip in the hope of securing work. No fares were charged, and the general public was

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not invited to ride. In short, the launch was a private carrier, operated by the employer for its own convenience and that of its employees. The facts as to this appalling disaster have already been fully set forth in an opinion by Judge Hazel and need not be repeated (*The Linseed King,* 24 Fed. 2nd, 967). The prior steps in this proceeding are of importance, however, because of the bearing of the New Jersey Workmen's Compensation Act upon the rights of the parties.

The proceeding was initiated in March, 1927, 542
by Spencer Kellogg & Sons, Inc., as owner of the launch. The petition, after setting forth the happening of the calamity, alleged that it was not due to any fault on the petitioner's part; and that many lawsuits for loss of life and personal injuries had been commenced, and that claims had been or would be filed with the New Jersey Workmen's Compensation Bureau. By reason of such facts, the petitioner stated that it sought the limitation of liability afforded by the Revised Statutes, and that it also desired to contest any liability whatsoever, except that it did not contest the
right of claimants to file claims with the Work- 543
men's Compensation Bureau. The value of the "Linseed King" at the end of the voyage was alleged to be $1,500. In the prayer for relief, the petitioner asked for an order directing the issuance of a monition to all persons claiming damages, citing them to appear before a commissioner and to make proof of their claims and also to answer the allegations of the petitioner (par. 3); for an injunction staying the prosecution and determination of all suits and proceedings in respect of any claims arising out of the voyage, with liberty, how-

ever, to any claimant to file his claim with the New Jersey Workmen's Compensation Bureau (par. 4); and for an adjudication that the petitioner was not liable to any extent on any such claims except such as should be proper and legal claims under the New Jersey Workmen's Compensation Law, and that as to such compensation claims (and any other liabilities imposed upon it), the liability be limited to the value of the launch (par. 5). In due course there was an order of this Court on
545 March 5, 1927, directing the issuance of a monition against all persons claiming damage from the disaster, and enjoining the beginning, prosecution or determination of all suits or proceedings except the filing of claims with the Workmen's Compensation Bureau. The order directed that service of it be made upon the Compensation Bureau, and it was so served. A restraining order to the same effect was also issued. Numerous claimants then came in and controverted the petitioner's claims of non-liability and limited liability.

The matter came on for trial before Judge Hazel in January, 1928. He found that there was negli-
546 gence in the operation of the "Linseed King," and further that the petitioner had knowledge or privity as to such negligence. Accordingly the petition for limited liability was denied, but the proceeding was continued in order to determine the liability of the petitioner on an unrestricted basis (24 Fed. 2nd, 967). The point was pressed by the petitioner before Judge Hazel that the New Jersey Workmen's Compensation Law was applicable to the claims of all persons who were employees or whose decedents were employees. The claimants, however, insisted that the sole issue at that time

was whether the petitioner was entitled to limit its liability, and that further testimony would reveal the inapplicability of the Workmen's Compensation Law. Judge Hazel did not deem it necessary or appropriate to pass upon this point at the time, and sent the case to a commissioner to take proof as to the Workmen's Compensation feature of the case as well as to matters of damages.

The commissioner took proof as to some seventy-eight claims. In his report he has recommended no awards in several cases, and awards ranging 548
from $300 to $15,000 in the majority of cases. As to workmen's compensation, the commissioner held the New Jersey Statute inapplicable, first, because the tort was maritime, and, second, because the nature of the proceeding conferred upon the admiralty court jurisdiction to hear and determine every claim of any nature growing out of the disaster. Exceptions have been filed. The exceptions of the claimants go to the commissioner's refusal to recommend awards to certain persons and also to the adequacy of the awards recommended in other cases. The exceptions of the petitioner, in addition to complaining of awards in particular 549
cases, present the broad proposition that there should be no awards in cases involving employees, because of the Workmen's Compensation Law. I will first give my views as to the applicability of the Workmen's Compensation Act to this case.

1. The New Jersey Workmen's Compensation Act is found in Laws of 1911, ch. 95, as amended. Section 1 provides for "compensation by action at law," in which actions the employer is stripped of certain common law defenses, and in which the em-

ployer's negligence is the main issue. Section II sets up "elective compensation" for personal injury or death of the employee arising out of and in the course of the employment, irrespective of the employer's negligence. This plan provides a schedule of installment payments in the manner typical of such statutes. It takes effect only by agreement of the parties, but every contract of hiring is presumed to have been made with the plan in mind, unless one party or the other has
551 given written notice to the contrary prior to the injury or death (par. 9). And such agreement to abide by the plan operates as a surrender by the parties of any other method, form or amount of compensation, a surrender binding upon the employee, his personal representative, widow and next of kin, as well as upon the employer (par. 8). Employers subject to the act are obliged to insure or to carry their own insurance. The Workmen's Compensation Bureau is the body by which the law is to be administered, although appeal to the courts from determinations of the Bureau is provided for. There are of course many other details
552 covered in the act, but the above outline will suffice for present purposes.

The rights of the parties under Section II are contractual. *Rounsaville* v. *Central R. R. Co.*, 87 N. J. Law 372; *Deeny* v. *Wright & Cobb Lighterage Co.*, 36 N. J. L. J. 121. Where the contractual status as to compensation exists between employer and employee, and injury or death is caused by accident arising out of and in the course of employment, no other remedy than under the compensation plan can be pursued by the employee or his representative; hence the personal representa-

tive of a deceased employee killed in the course of employment cannot maintain an action at law for wrongful death against the employer. *Gregutis* v. *Waclark Wire Works,* 86 N. J. Law 610. The situation is as if the employee had said to the employer, "In consideration of your promise to pay the award set forth in the statute, in case I shall be injured or killed by accident arising out of and in the course of employment, I now relinquish any other rights that I or my representatives might otherwise have had against you by rea- 554
son of such future injury or death, and will look solely to the workmen's compensation award," and as if the employer had then made the promise. The statute is said by the New Jersey courts to be a remedial law of prime import, to be broadly and liberally construed. *Jersey City* v. *Borst,* 90 N. J. Law 454; *O'Mara* v. *Kirch,* 7 N. J. Advance 1099. While the compensation plan is elective, the election against the plan must be made prior to the injury or death, and it must be made in writing. After the accident has occurred, neither party can elect against the plan.

There can be little doubt that as to regular em- 555
ployees who were on the boat at the time of the disaster, injury or death came from an accident arising out of and in the course of the employment. It is true that they had not yet commenced the days' work, and that they did not receive pay for the time spent in crossing the river. They were on their way to work, however, and were being transported in a conveyance owned and operated by the employer day after day to carry them to work, for the convenience of employer and employees alike. In the New Jersey cases, such

transportation is said to be an incident of the employment, and injury or death of an employee while being so transported is held to arise out of and in the course of the employment. *Fisher* v. *Tidewater Bldg. Co.*, 96 N. J. Law 103; *Soden* v. *Public Service Corporation*, 134 Atl. 560, affirmed in 103 N. J. Law 713; *Bachels* v. *Pepoon*, 5 N. J. Misc. 122; *Alberta Contracting Corporation* v. *Santomassimo*, 8 N. J. Adv. 457. There are numerous rulings by the New Jersey Workmen's Com-
557 pensation Bureau to the same effect. *Gebhart* v. *Mekeel*, 5 N. J. Misc. 475; *Bekos* v. *Knight Const. Co.*, 5 N. J. Misc. 443; *Fredman* v. *Safier*, 5 N. J. Misc. 459; *Hunter* v. *Atlantic City Electric Co.*, 7 N. J. Misc. 725. The fact that the employees were not paid until they arrived on the job was held immaterial in the *Alberta* case, *supra*, where the New Jersey Supreme Court also said:

> "We believe that the pertinent rule to be extracted from the cases is this: the relation of employer and employee continues while the employee is riding to and from his employer's
558 premises, in a truck used in connection with his employer's work, by direction of his employer, and his knowledge and acquiescence in the continued practice, which was beneficial to both the employer and employee; and an injury sustained while so riding arises out of and in the course of his employment."

The claimants point out that the accident occurred in waters forming part of New York. The New Jersey compensation act and the contract for compensation made under it are held to cover in-

jury or death occurring outside the state, where the employment is a New Jersey employment. This seems to be the general rule under elective compensation statutes. *Rounsaville* v. *Central R. R. Co., supra; Foley* v. *Home Rubber Co.,* 89 N. J. Law 474; *Deeny* v. *Wright & Cobb Lighterage Co., supra.* It is also argued that since the disaster happened on navigable waters, the Workmen's Compensation Act is excluded by admiralty law, by reason of what was decided in *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205. In the *Jensen* case 560
the employment was a maritime one. Under such conditions, the New Jersey act has no operation. *March* v. *Vulcan Iron Works,* 102 N. J. Law 337. Here, however, the employment (except as to men engaged in navigating the launch, and as to men whose work it was to unload ships) was non-maritime. The decisions of the Supreme Court subsequent to the *Jensen* case show that the local compensation statutes are not excluded unless the tort occurred on navigable waters and unless also the employment was maritime. *Grant Smith Porter Co.* v. *Rohde,* 237 U. S. 469; *Millers' Underwriters* v. *Braud,* 270 U. S. 59; *Alaska Packers* v. *Industrial Accident Commission,* 276 U. S. 467. 561

Finally, it is pointed out by the claimants that the employees were being transported from New York to New Jersey; that interstate commerce is involved; and the argument is that the New Jersey statute is for that reason rendered inoperative. There is no merit in this argument. Of course, where employees of common carriers by railroad are injured or killed while engaged in interstate commerce, Congress has covered the entire field by the enactment of the Federal Employer's Liability

562 *Opinion by Judge Patterson, December 17, 1930.*

Act, and state workmen's compensation statutes are excluded. *New York Central R. Co.* v. *Winfield,* 244 U. S. 147. But here the employer was not a common carrier and did not operate a railroad, and Congress has never, so far as I know, passed any statute relative to the liability of such an employer for injury or death suffered by its employees while incidentally being carried from state to state. The matter is within the zone of valid state legislation. *Leisy* v. *Hardin,* 135 U. S. 100.

563 There is undisputed evidence in the case that no written notice was given by any party prior to the accident, whereby an election against the compensation system was registered. My conclusion, therefore, is that the elective system of compensation embodied in the New Jersey Workmen's Compensation Act governed the injuries and deaths of all the employees hired for non-maritime work. The remedy provided by that system (awards by the Compensation Bureau) was the exclusive remedy for all such employees and their dependents. It seems clear that the suits at common law, the suits in admiralty and the suits under death
564 statutes which had been commenced could not have been maintained over the objection of the employer that the right to obtain compensation or damages by such suits had been surrendered prior to the accident. *Gregutis* v. *Waclark Wire Works, supra; O'Mara* v. *Kirch, supra; Delaware, etc., R. Co.* v. *Peck,* 255 Fed. 261; *Barnhart* v. *American Concrete Steel Co.,* 227 N. Y. 531.

A more difficult question is whether the petitioner, by instituting and maintaining this limitation proceeding, has lost its right to confine the employees (including in that term personal repre-

sentatives of deceased employees) to their workmen's compensation remedy. The employees argue that the petitioner has lost such right, basing the argument upon waiver, estoppel, rescission of contract, and finally upon considerations peculiar to limitation proceedings. Before discussing these grounds, however, it may be observed that the petitioner as matter of law could not limit its liability to pay workmen's compensation awards in cases of injured or deceased employees, even though it had been free of fault. There seem to 566
be no authorities on the point, but it is plain enough on principle. An employer's liability to pay compensation awards under the New Jersey act arises from his personal contract. *Rounsaville* v. *Central R. Co., supra.* It is settled that the limitation acts (R. S. 4283, ff.) do not apply to liabilities resting on personal contracts of the owner. *Pendleton* v. *Benner Line,* 246 U. S. 333; *Luckenbach* v. *McCahan Sugar Co.,* 248 U. S. 139; *Capitol Transportation Co.* v. *Cambria Steel Co.,* 249 U. S. 334; *The E. S. Atwood,* 289 Fed. 737. To some extent, this is true even of implied contracts. *The Loyal,* 204 Fed. 930. In this connec- 567
tion, it is interesting to note that in 1927 Congress expressly provided that an employer's liability to make payments under the Longshoremen's and Harbor Workers' Compensation Act shall not be subject to limitation by reason of the limitation acts (Act of March 4, 1927). The limitation acts therefore gave the petitioner no protection against workmen's compensation claims, and I am convinced that any employee, by pressing an exception or motion against the petition, could have promptly obtained a dismissal, of this proceeding so far as it concerned him.

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If the term "waiver" is used in its conventional sense as the intentional relinquishment of a known right, there has been no waiver by the petitioner of its right to insist that all employees be confined to their remedy under the compensation statute. It took the stand in its petition that their rights were to be determined by the Compensation Bureau. It has never departed from this position. True, it erroneously sought to restrict its liability upon the awards which it expected would be made by
569 the Compensation Bureau, but this does not establish waiver.

The elements of equitable estoppel are lacking. The petitioner now says that the employees have no claim against it sounding in damages but have simply the right to get compensation awards under the compensation statute. This has been its position at all stages of the case. There have been no prior representations to the contrary and no prior conduct antagonistic to its present position. Moreover, there is nothing in the case to show that any of the claimants were misled by the position
570 taken by the petitioner. Their failure to obtain compensation awards, so far as shown by the record, was not because of anything done or said by the petitioner in this proceeding, but was due to their belief that the Workmen's Compensation Act, for one cause or another, had nothing to do with the case. In this connection it should be noted that the time within which claims arising from this accident may be filed with the New Jersey Bureau has not yet expired (New Jersey Laws of 1924, ch. 187, sec. 6; *Franko* v. *Ohio Chemical Co.*, 8 N. J. Misc. 376), and the petitioner has announced before me its readiness to pay awards by the

Bureau. Having successfully contended in this proceeding that the Compensation Bureau had sole jurisdiction, it would obviously be estopped before the Bureau to face about and dispute the jurisdiction, or to deny that the injuries and deaths of employees were as fully covered by the act as if they had occurred in its own plant, or to contend (for at least a year hence) that the right to file claims before the Bureau had expired. It may also be noted that at the opening of trial before Judge Hazel in January, 1928, the petitioner of- 572
fered to pay all employees and their personal representatives the amounts due them under the Workmen's Compensation Law, abandoning to this extent its claim of limited liability; but the claimants rejected the offer.

The case of *Old Ironsides*, 1929 A. M. C. 300, is not in point as to estoppel. There seamen were injured while working on a ship off the California coast. The Court, following the *Jensen* case, held that the California Workmen's Compensation Act was not controlling, and awarded damages in a limitation proceeding. Two of the injured seamen, however, had filed claims with the compensation 573
bureau, and the claims had been paid despite the lack of jurisdiction. As to these two men, it was held that they were estopped to insist upon damages in admiralty. This because they had taken the position that the compensation bureau should make awards and because they had been successful in that position to the extent of receiving payments in full. It is a familiar rule that one who has successfully maintained a position in litigation is estopped later to say that such position was erroneous. The situation here is not analogous.

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The argument is made that the petitioner had bound itself by contract to the statutory compensation plan, with its features of awards by the New Jersey Bureau and prompt payment of such awards; that the petitioner broke these contracts by disputing its liability to pay any awards except to a trifling extent, and also by restraining the employees from proceeding to obtain awards; that such conduct amounted to a repudiation by the petitioner of the contracts or constituted a breach
575 of such gravity that the employees could treat the contracts as rescinded; and that consequently the latter are entitled to assert their rights at common law or in admiralty. I own that at first this line of reasoning struck me as sound. There is no gainsaying the fact that the conduct of the petitioner has been in violation of its contractual duty under the New Jersey compensation plan. It asked for and obtained an injunction which, while permitting the filing of compensation claims in New Jersey, obstructed any further progress along that line for a considerable time. One of the valuable features of workmen's compensation is the speedy
576 relief given to injured employees and to dependents of employees who are killed, without putting them to litigation beyond what may be involved in the determination of claims by the compensation board and in appeal from such determination. But the conclusion that the employees were thus remitted to their rights at common law or under death statutes does not follow. The general rule is that where a claim has been released for a promised consideration, which is not given, the claimant may treat the release as rescinded and recover upon the original claim. *Williston on Con-*

*tracts,* sec. 1457. This rule might be applicable here if the employees had at one time had claims in tort against the employer, which claims they had surrendered upon making contracts for the payment of compensation, and if the employer had later declined to pay the promised compensation. But under the New Jersey statute and the contract resulting from it, they never had claims in tort against the employer, and they never had claims in contract for injury or death except their claims under the compensation plan. They cer- 578
tainly had no claims for injury or death prior to December 20, 1926, and before that time came they had made an agreement surrendering all other rights than the right to get workmen's compensation awards. So they are not asking the Court to revive claims which they once had at common law, in admiralty or under a death statute; they are in effect asking the Court now to create for them claims which they never owned, claims which they could have had but for the compensation act and the resulting contract. I conclude that there is no room here for the rule of rescission. The
remedy for the petitioner's breach of contract is 579
to hold it for interest upon the delayed payments of compensation, and I have no doubt that the Compensation Bureau will attend to this matter in making awards.

Stress is also laid by the claimants upon the rule in *Hartford Accident Company* v. *Southern Pacific Company,* 273 U. S. 207, to the effect that where a shipowner sues to limit liability and limitation is denied, the proceeding does not necessarily terminate, but the Court may proceed to adjudicate all claims arising from the accident,

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whether independently cognizable in admiralty or not, and may render judgment both *in rem* and against the owner *in personam*. This rule has already been applied in this case as to all claims which do not involve employees. But to say that the Court may entertain, in the case of employees, tort claims which never existed and may award damages without relation to the amounts specified in the Compensation Act and agreed upon by the parties as the employees' sole measure of recovery,
581 is to carry the *Hartford* case far afield. That case dealt with procedural rights of the parties; it does not hold that their substantive rights are changed by the fact that the ship owner has unsuccessfully sought to shelter himself under the limitation acts. One of the reasons for the result reached in the *Hartford* case was the inequity of sending claimants empty away, to begin new suits, after the owner had impeded them in the bringing of suits. I am sensible of the fact that here the owner contributed toward delaying the claimants in the pursuit of their real remedy, and to this extent its conduct may be termed inequitable. But I cannot
582 believe that the claimants thereby acquired tort claims which they never had before or that the owner is thereby equitably estopped to say that they have no claims sounding in ordinary damages, but have claims only in workmen's compensation.

The most that can reasonably be claimed from the authority of the *Hartford* case, in connection with the present case, is that instead of sending the parties to the New Jersey Compensation Bureau, this Court ought itself to make awards to the claimant-employees upon the same basis as the Compensation Bureau would make them, and ought

to render judgment in this proceeding against the petitioner *in personam* to cover such awards. I would be glad to do so if I had the power. The New Jersey Compensation Act, however, like all other compensation acts with which I am familiar, requires payment in installments over a period of time. Payment in a lump sum is permitted, but only when approved by the Bureau or other designated New Jersey officials. Clearly this Court has not the authority or the means to order and to enforce such payments. *Southern Pacific Co.* v. 584
*Jensen,* 244 U. S. 205, 218. In my opinion, the Supreme Court in the *Hartford* case did not mean that workmen's compensation claims, or for that matter any other claims not cognizable in an ordinary Court of law or equity, could be adjudicated by an admiralty court.

I am therefore forced to the conclusion that the claimants who were regular employees of the petitioner, hired to do non-maritime work, and also the claimants who are personal representatives of deceased non-maritime employees, cannot be given relief in this Court, either by damage awards or by awards similar to workmen's compensation. Their 585
remedy is to file claims with the New Jersey Workmen's Compensation Bureau and to obtain awards there, and it is to be hoped that they will do so promptly. From the proof before me, it seems clear that the following cases fall into this class:

James Alexander, Charles D. Burns, Samuel Daniels, Domingo DeMeza, Frank Eberle, Henry McEachim, Frank Marques (Martin), Fernando Martin, Adolphus Matthias, Carlos Morales, George Nemetz, Uriah Pusey, Clifford Rawlins, John Benjamin Samuels, John Turner, John Cas-

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tro, Joseph Hamilton, Eric Martin, Fred Sumner, Nathaniel Wisdom, Ernest Boyer, David H. Clarke, Balfour Corriette, Thomas Coyle, Victor Kreminsky, Juan C. Munoz, Eladio Ortiz, Carlos C. Thigpen, Paul Boots, Dominick Darco, Felipe Durate, Junius Johnson, Bernhard Lang, Louis Ortiz.

The exceptions by the petitioner to awards in the above claims are sustained. It is unnecessary to pass upon the soundness of the commissioner's refusal of awards in some of the above cases and
587 upon the adequacy of his awards in others.

The case of Alfred Roberts, one of the men lost in the disaster, is out of the ordinary. He was undoubtedly a regular employee, working as a chauffeur at $35 a week. But he also assisted in operating the "Linseed King" when he was on it, and the employer knew and approved of this practice. The man in charge of the boat testified that he would have had an extra man to assist him but for the fact that he preferred Roberts' help. To this extent, Robert's work was maritime. The death having occured in navigable water, the Workmen's Compensation Act does not apply to
588 his case. His personal representative is entitled to damages in this proceeding. *Southern Pacific Co.* v. *Jensen, supra.*

A large number of those who perished or were injured on the "Linseed King" were merely looking for work, in response to an advertisement. These men were concededly not employees, the compensation statute does not cover their cases, and damages for death or injury may be given by this Court. There is still a third group of men who had applied for employment several days prior to December 20th, had been given slips of paper

with numbers, and had been told to report for work on December 19th, to unload a ship. These men had reported on December 19th, as instructed. They were then told that the ship had not arrived and that they should return for work the next day. They were returning when the disaster happened. They had done no work and had earned no compensation. The commissioner held that these men were employees. I do not agree. In my opinion, the status of employer and employee had not yet come into existence, and the compensation statute 590
does not apply to these cases. *Coco* v. *Wilbur,* 104 N. J. Law 275, seems indistinguishable. It appears, moreover, that the work expected of these men was the unloading of a ship. This would be maritime employment and the workmen's compensation act does not apply to an injury or death to maritime employees which happen on navigable water. *Southern Pacific Co.* v. *Jensen, supra; March* v. *Vulcan Iron Works, supra.* The Longshoremen's and Harbor Workers' Compensation Act was not in effect at the time of this accident. Damages are therefore to be awarded in the cases involving men in this third group. 591

2. There remain the cases of non-employees, the men who had received numbers and had been promised a job unloading the ship, and also the men who came in response to the advertisements for help wanted. There also remain the cases of Roberts and one or two others whose work seems to have been, in part at least, of a maritime nature. Before considering the cases separately, I will comment upon certain matters common to many of them.

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The claims are of two general classes. One class is claims for personal injuries, where survivors are claimants. The other and more numerous class consists of claims by personal representatives complaining of the death of their intestates. These latter causes of action are derived from the New York statute allowing recovery for death by wrongful act, which statute is now part of the New York Decedent Estate Law. The deaths occurred in waters within the territorial limits of New York,
593 and it is conceded that the death claims concerning non-employees are controlled by the New York statute. Such a suit is maintainable by the personal representative of the deceased, but the damages recovered are exclusively for the benefit of the widow and next of kin, determined as in cases of intestacy with certain specified exceptions. The damages are to serve as compensation for pecuniary injuries resulting from the death of the decedent to the relatives in whose behalf the suit is brought. Decedent Estate Law, section 132. The New York courts have held that loss of support and reasonable funeral expenses are proper elements of dam-
594 age, but that nothing may be given for grief, and the correctness of these rulings, in view of the language of the statute, is obvious. *Oldfield* v. *New York & Harlem R. Co.*, 14 N. Y. 310; *Murphy* v. *New York Central R. Co.*, 88 N. Y. 445.

The term "loss of support" is not quite accurate. The injury is to estimate the pecuniary benefit which the next of kin would have received, by contributions, services or inheritance, from the continuance in life of the deceased. *Meekin* v. *Brooklyn Heights R. R. Co.*, 164 N. Y. 145. The plaintiff or claimant is not obliged to prove a legal

obligation by the deceased to support, nor need he show that the next of kin have no other means of livelihood. *Carpenter* v. *Buffalo, N. Y. & P. R. R. Co.*, 38 Hun 116.

Many of the claimants paid burial expenses. I think that it was the intention of the commissioner to allow recovery for these amounts, insofar as they were proved and appeared reasonable, and that the omission of them in the final amounts mentioned in the report was inadvertent. I will allow funeral expenses, not to exceed $275, in each 596
case where the proof shows that the person or persons for whose benefit the claim is maintained paid such expenses. I make this limitation because in some cases the petitioner seems to have paid the undertakers' bills.

The claimants insist that all the death awards should carry interest from the date of death, December 20, 1926. On this feature of the case, the commissioner declared that the damages recommended were computed as of the date of the report, July 3, 1930, and should bear interest only from that day. All parties agree that the matter of interest is governed by the New York statute 597
already referred to, which in section 132 provides:

> "When final judgment for the plaintiff is rendered, the clerk must add to the sum so awarded, interest thereon from the decedent's death, and include it in the judgment. The inquisition, verdict, report or decision may specify the day from which interest is to be computed; if it omits so to do the day may be determined by the clerk upon affidavits."

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The claimants rest upon the first sentence quoted; the petitioner rests upon the second sentence and says that the commissioner has covered the question of interest in a proper way. As I read the statute, the first sentence is controlling and the second subordinate. The meaning of the passage is that in all cases the plaintiff shall be entitled to interest from the date of death; that the jury, referee or court may indicate what day is found to be the date of death; and that in
599 cases where the date of death is not so indicated, the clerk may determine on affidavits what the date of death was. In other words, I believe that "the day" in the second sentence means the day of death. There are of course cases where the date of death is matter of dispute, and the second sentence may have been intended to cover such cases. Upon this construction, both of these sentences serve a purpose. Upon the petitioner's construction, that the Court, jury, commissioner or referee may pick out a day over three years after the time of death as the date from which interest may run, the first sentence, in spite of its mandatory verb, is
600 rendered futile and might as well be expunged from the statute. The final judgment to be entered will therefore direct the clerk to add to all awards in death claims (but not in personal injury claims) interest at six per cent. from December 20, 1926.

The petitioner says that the commissioner, in fixing the amounts of the awards, probably took into account a smaller sum as the damages on December 20, 1926, added interest to it and capitalized the total into a figure as of July 3, 1930; and they point out that by this capitalization of inter-

est the claimants will receive more than on the smaller principal amount with interest from December 20, 1926. There is nothing in the report to show that the commissioner made any such calculations. However that may be, I find that the amounts hereinafter specified in this opinion as awards in death claims represent the damages to the claimants as of December 20, 1926, and should carry interest from that time. To this extent the report of the commissioner is revised in the individual cases hereafter referred to.

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Finally, as to the amounts of the awards. The commissioner has mentioned the factors taken into account by him in determining the pecuniary losses, all of which seem to be proper factors. He also makes mention of the weight given to the appearance and behavior of the witnesses while testifying. This of course is an element of prime importance. I am quite sensible of the fact that the commissioner had the advantage of seeing the witnesses face to face; yet I believe that in certain of the death cases the figures recommended by him do not properly compensate the next of kin for their pecuniary losses. I do not mean to intimate 603 that the commissioner was bound to accept as true the testimony of an interested witness as to what the earnings of the deceased had been or as to what his contributions had been. That such testimony was uncontradicted does not alter the case; in some instances, it was too vague and indefinite to render contradiction possible.

*Roy Amlaw, deceased.* The death of this man was satisfactorily established. Two claims were filed, one by a divorced wife with three children,

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the other by the wife to whom the deceased was married at the time of his death. The commissioner ruled that the divorced wife had no standing to recover damages, which is obviously correct, and recommended an award of $12,000 for the benefit of the widow and of the three children by the former marriage. This man had not supported his children for years, although under order of court to do so. In view of the proof as to the career of the deceased, the fact that while living he had pro-
605 vided very meagre support to his dependents, and all the circumstances of the case, I am of the opinion that the amount recommended is fair and reasonable. (In this case, as in all other death cases later discussed, the amount fixed by me represents the damages as of December 20, 1926, and will carry interest from the date of death, and it is with this qualification that the amount which has been recommended by the commissioner is approved.) Funeral expenses in the amount of $213 are also allowed, making the total award in this case $12,213. Nothing should be paid over to the administratrix until there is security that the three-
606 children by the former wife will receive their proper share of the recovery.

*Joseph Bassnet, deceased.* There is doubt whether this man was one of those who perished in the disaster. A corpse was identified as his, but there is also testimony that this body was in fact that of Clifford Rawlins. The commissioner found that the identity of Joseph Bassnet was shown. I am in agreement with this finding. The amount recommended by him is $10,000, which I believe is proper.

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*Thomas Davis, deceased.* This claim is filed by Bessie Davis, wife of a man by the name of Thomas Davis. No body identified as that of Davis was ever recovered from the river. The commissioner, in concluding that such a man was aboard the "Linseed King" on the fatal trip, said that his name appeared on the employer's list of men who had been engaged to unload the ship. This is a mistake, induced no doubt by a similar mistaken statement in the claimant's brief. No such name was on the list. The only testimony tending to 608
place a Thomas Davis on the launch is that of Louis Skeers and William Morris, together with that of May Skeers. Skeers and Morris say that Thomas Davis lived with them, that they walked down to the pier with him before daylight on the morning in question, and that although they did not board the launch, they saw Davis do so. May Skeers corroborated them in part. This story, while unusual, is not so improbable as to be unworthy of belief. The matter turns on the credibility of these witnesses, and I am not prepared to say that they were not telling the truth. The commissioner saw them and was apparently 609
impressed by their story, for in his report he mentions Skeers' testimony. While the proof is not strong, I have reached the conclusion that the Thomas Davis who lived with the Skeers did lose his life on the "Linseed King."

The petitioner insists that, even, if this is true, there is nothing to show that the Thomas Davis who lived with the Skeers is the Thomas Davis who was the claimant's husband. The Thomas Davis who stayed with the Skeers had been there for several years, with a woman known as Cath-

erine Davis. She had been living with him for two years and passed as his wife. The Skeers had never heard of Bessie Davis, the claimant, until after the accident. The Thomas Davis who married the claimant in 1922 had lived with her until 1924, when she went on a visit to Chicago. He lived with her again early in 1925, until she departed again for Chicago. She stayed in Chicago thereafter, except for a brief time in 1926, while her husband remained in New York. The claim-
611 ant did not know where he lived here and did not know the Skeers. These facts certainly tend to show a lack of identity. In favor of identity, we have the identity of names, the fact that the claimant's husband has not been seen since the disaster, the fact that he was a longshoreman, and the very significant fact that Catherine Davis did not turn up as a claimant in this case. I believe that the Thomas Davis who lived with the Skeers and who perished on December 20, 1926, was probably the claimant's husband. The real relationship between him and Catherine Davis is not hard to surmise, nor is it strange, in view of this, that Bessie Davis
612 and Louis Skeers had not heard of one another. The case is a very close one, but it seems to me that on the whole case the claimant has established both the death of Thomas Davis and her own status as his wife, and I will not disturb the commissioner's findings in these respects.

The commissioner found damages at $4,000. Thomas Davis had no steady job. His earnings were meagre. When he and his wife lived together, they stayed with her mother. He was living with another woman at the time of his death and had not contributed anything to his wife's sup-

port for several months. He was living here, she in Chicago, and she did not even know where he was living here. In view of these facts, I think that $5,000 is a fair and reasonable estimate of the claimant's pecuniary loss, and I will accordingly make an award of $5,000.

*David Hicks, deceased.* This man unquestionably lost his life in the disaster. He left a widow and small daughter, in addition to several grown children. Hicks was an elderly man, and his record of employment was not continuous. His wife 614
was obliged to get outside employment. The widow seems to have been a frank and fair witness. The commissioner recommends an award of $7,500. The claimant does not object to this amount, but the petitioner excepts to it as excessive. In my opinion, the amount recommended is fair and reasonable. An undertaker's bill for $227.20 is also allowed, making the total award $7,727.20.

*McBean H. Ifill, deceased.* I am satisfied that this man was one of those who perished on the "Linseed King." The claim is by his wife. The 615
only question relates to the damages. The commissioner recommended $10,000. The proof as to Ifill's past earnings is not clear-cut and definite, but under all the circumstances of the case I will not disturb the commissioner's recommendation. The award is $10,000.

*Matthew Leibold, deceased.* No body identified as that of Leibold was ever recovered. There is no reason for believing that any such man was on board the "Linseed King," beyond the testimony of

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the claimant, his alleged widow, who says that early on the morning of December 20, 1926, Leibold left home with the remark that he was going over to the "Linseed King." It was shown that Leibold could not possibly have caught the boat if he had left home at the time set by the claimant. It was also shown that the claimant was then living with a Filipino called Pages, and that she herself went under the name of Pages. No one by the name of Leibold lived with her or was known to
617 the other tenants in the house. Other evidence wholly at variance with the claimant's story was received. The claim is a fabrication and the commissioner's refusal to recommend an award was right.

*Andrew S. Murphy, deceased.* The decedent was survived by a widow and son, but the widow died two years after the accident. It is hard to gleen from the record any definite data as to Murphy's past earnings or future prospects. In view of all the circumstances, I believe that the damages in this case amount to $7,000, rather than $5,000 as
618 recommended. The award will be $7,000.

*Alfred Roberts, deceased.* I have already indicated the reasons for my conclusion that this claim is cognizable in admiralty, despite the fact that Roberts was an employee and lost his life in an accident arising out of and in the course of employment. He was survived by a widow and small daughter. The commissioner fixed the damages at $14,000.

I am of the view that this amount is inadequate. Roberts was thirty years old. He had had a bet-

ter education than the average of the men lost in this disaster. He had been a non-commissioned officer in the army, which tends somewhat to show that he possessed qualities of leadership. The testimony taken at the trial before Judge Hazel, as well as the testimony before the commissioner, leads one to believe that Roberts was an intelligent, capable and dependable man. His earnings, while not large at the time of his death, had been steadily increasing, and I think that his chances of advancement in later years were good. The 620
damages sustained were in my opinion $20,000, and the award will be for that sum.

*Paul Saul, deceased.* The deceased was survived by a widow living in Europe. He was a seaman. The commissioner recommended $4,000. In view of his age, his contributions to his spouse and other circumstances, I have concluded that the pecuniary loss was $6,000. The award will be $6,000.

*Arthur Johnson, deceased.* In this case, the claimant called herself the widow of the deceased. She first testified to a ceremonial marriage in 621
Virginia in 1922. When this story was proved untrue, she abandoned it and shifted to a common law marriage. It was shown, however, that she had been ceremonially married to one Hendricks in 1910, and that this husband was apparently still living in 1926. Even if we forget this element, there is nothing to indicate a common law marriage. The claimant told so many different stories that her entire testimony is unworthy of belief. It is doubtful whether the deceased even cohabited with her except at casual times. There is no

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foundation for this claim, and the commissioner was right in recommending dismissal.

*George Sims, deceased.* This claim is likewise made in behalf of an alleged common law wife. The deceased was also survived by his mother. He had no children.

The claimant, known as Geneva Sims, had been ceremonially married to one Neal in 1919 and had two children by him. Neal deserted her. She
623 commenced living with Sims in 1922 or 1923 and began to use the name Sims. At this time she and Sims were living with her mother. A year or two later Neal died, and she claims that when they heard of his death, Sims and she said to one another that from then on they would be husband and wife. They then moved to another house. Their cohabitation continued down to the time of Sim's death. There was also testimony by several friends that Sims had introduced the claimant to them as his wife. The commissioner concluded that the alleged common law marriage did not exist in this case.

624 I am of the opinion that the commissioner was right. The law does not look with favor upon the connection usually indicated by the expression. It is notorious that after a man's death a woman frequently turns up as his "common law wife" and seeks by fraud to gain a share of his estate. She may have been his mistress or she may not have borne even that relationship to him. It is therefore sound law and sound policy to scrutinize all such claims closely and to require strong proof in support of them.

"The validity of any alleged common law marriage is always open to suspicion. Especially is doubt justified when one of the parties is dead. Clear, consistent and convincing evidence is required to establish the fact" (*Boyd* v. *Boyd*, 252 N. Y. 422, 428).

In this case the relationship was unquestionably meretricious at the outset; the husband of the claimant was still living. Under such conditions, there can be no marriage even though cohabitation 626
is continued after removal of the impediment, unless there is unequivocal proof of a change in the status of the parties. *Hill* v. *Vrooman*, 215 App. Div. 847; 242 N. Y. 549; *Collins* v. *Voorhees*, 47 N. J. Eq. 555. The case is at best a doubtful one, which means that the conclusion of the original trier of the fact, who had the witnesses before him, should not be disturbed. *Boyd* v. *Boyd, supra.*

I confirm the commissioner's recommendation that Geneva Sims should receive no award. The commissioner recommended that $2,500 be awarded for the mother, Amy Sims. In my opinion, the damages sustained by the mother were $4,000, and 627
an award in this amount for the benefit of the mother will be made.

*Joseph Claudius Viscay, deceased.* Two claims have been filed to recover for the death of Viscay. The first is by Rose Viscay or Rose Jones, who asserts that she is the common law wife; the second is by one Rockwood in behalf of Edmund Viscay, a son of the deceased by another woman.

The commissioner found against Rose Viscay. I have read the testimony with care and have reached

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the same conclusion. It seems that she did cohabit with Viscay for over a year. But it was shown that Viscay had had similar affairs with at least two other women, and that Rose had a somewhat similar career. She vigorously denied the charges against her, but the commissioner, who had the advantage of seeing and hearing the witnesses, did not believe her. She stated several times that she had never been married to anyone, and went so far once as to say that she did not believe in matri-
629 mony. The relationship was undoubtedly meretricious at first and remained so throughout. Neither party considered the connection a permanent one.

As to the alleged son, Edmund Viscay, the commissioner was inclined to find against him, but left the matter open for further proof. The claim is that this boy is the child of the deceased and Emily Rockwood, his common law wife. The boy was born in 1917. Emily Rockwood was ceremonially married to one Cain in 1916. In view of this, it is difficult to see how the boy could be the legitimate son of Viscay. I am of opinion that the association between Viscay and Emily Rockwood was
630 of the same character as his later association with Rose Jones. The proof is quite clear on the point. The application to take further testimony is denied and the claim is dismissed.

*John Brennen, deceased.* John Brennan was a seaman. There is doubt whether he lost his life on the "Linseed King." The commissioner resolved the doubt against the petitioner, and I concur with him that the body identified as that of Thomas Brennan was in fact that of John Brennen. Brennen was single, his next of kin being his father

and mother living in Ireland. His employment was sporadic, and his contributions to his parents varied according to his job. The commissioner recommended an award of $3,000. After a careful study of the testimony, I have concluded that $4,000 represents the pecuniary loss to the mother, and the award will be for such sum.

*Thomas Anthony Connolly, deceased.* The death of this man is undisputed. He lived with his mother and brother in New York City and con- 632
tributed toward his mother's support. He was twenty-eight years old, unmarried. He had no regular occupation and worked wherever he could find a job. The commissioner recommended an award of $2,500. I believe that this amount is too small and find the damages to be $5,000. Funeral expenses of $482 were proved. I will allow $275 for funeral expenses, making the total award $5,275.

*Joseph Dobransky, deceased.* The body of this man was found on the launch. He was unmarried and was survived by an aged mother living in Po- 633
land and eight grown brothers and sisters. The mother claims that he sent about $100 a year to her. Under all the circumstances, the contributions made to the mother and her short expectancy of life, the amount recommended, $2,000 for the mother, seems fair. To it will be added the sum of $250 as funeral expenses, making the total award $2,250.

*William Graham, deceased.* This claim is filed by a second cousin. There is nothing to show that Graham is dead or that he was on the "Linseed

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King." Nor is there anything to show that he had ever contributed to the support of his second cousin, the claimant. There is no reason to believe that he would ever have given her anything. The commissioner's recommendation of dismissal is confirmed.

*Samuel Griffith, deceased.* The body of this man was never found. His name does not appear on any records of the petitioner as an employee or
635 prospective employee. The proof as to his death rests upon the testimony of two survivors who say they saw him on the launch, together with the statement that he has never been seen since. These two witnesses appear to have been believed by the commissioner. There is nothing improbable in their testimony, and it seems to me that the death of Griffith was satisfactorily proved. The next of kin were a father and mother living in Barbadoes. The deceased seems to have sent money to them, although the amounts do not appear. I will confirm the recommendation of the commissioner and make an award of $2,000.

636 *John Hartman, deceased.* The death was clearly established. The deceased was survived by his mother, brothers and sisters. His mother was supported in part by his contributions and is sixty-one years of age. I have concluded that the damages sustained by the mother were $5,000, rather than $2,500 recommended by the commissioner. The funeral bill up to $275 will be allowed, and the total award will be $5,275.

*James Heap, deceased.* This young man was survived by a father and mother living in England.

He had been a steward on passenger ships, but was unemployed at the time. The pecuniary loss seems to have been reasonably estimated by the commissioner at $4,000, and this amount will be awarded as damages.

*Harry Jackson, deceased.* The claim is by Julia Jackson, a sister of the deceased. There is no clear proof that any such person lost his life on the "Linseed King." His body was never recovered, and the petitioner has no record of his having applied 638
for a job. The only evidence connecting him with the disaster is the testimony of the claimant, who says he left home on the morning in question in answer to the petitioner's advertisement for help, and the testimony of a friend who claims to have accompanied him to the pier. The claimant also says that she identified a hat at the police station as belonging to her brother. The story told by the friend is so incredible and the claimant herself was so thoroughly discredited that no faith can be put on their testimony. As to the amount of damages, the claimant told a tale of her brother earning large sums and showering her with money 639
in the most lavish manner, despite the fact that on her own story he was seeking a job with the petitioner as an unskilled laborer at forty-eight cents an hour. She testified repeatedly that her husband had died in 1917 and stuck to her story until she was confronted by her deceased husband in Court. She then was obliged to admit that she had known him to be alive all along and that she had recently been in touch with him. It is only fair to the husband to state that he was in no way cognizant of the claimant's attempted fraud.

640 *Opinion by Judge Patterson, December 17, 1930.*

The commissioner recommended an award of $1,000. There is no credible proof in the case, and no award will be made to this claimant.

*John W. Kakos, deceased.* The body of a white man was found floating in the Hudson about three months after the accident. In one of his pockets there was a clock-check issued by the petitioner, No. 3113. The petitioner's records show that this check had been given to a man who called himself
641 William Kenny and who had applied for work two or three days before December 20th. The issue is whether Kakos and Kenny were the same man. The commissioner reached the conclusion that they were the same and recommended an award of $4,000 to Kakos' father. If the testimony of the father is to be believed, there is a sufficient basis for the commissioner's finding. The father testified that his son used both names and that he had received a letter from his son a day or so before the accident to the effect that he had obtained a job with the petitioner. Immediately after the body was found and the name of Kenny
642 was connected with it, the police notified Kakos' brother which tends to show that the Kakos family had asked the police for information as to Kenny before they could have known that the corpse was that of a man passing as Kenny. This is corroborative of the father's story and tends to clear the case of any suspicious atmosphere. There was testimony offered by the petitioner looking the other way. The issue is a close one, but on the entire case I am of the opinion that the claimant has established by a preponderance of proof that the body taken from the river was that of his son,

John W. Kakos. I am fortified in this opinion by the views of the commissioner, who saw the father on the witness stand, had an opportunity to consider his demeanor and evidently believed his testimony. The amount of damages recommended is $4,000. In my opinion, the amount should be $5,000. Funeral expenses, to the amount of $275, will also be allowed, and the total award will be $5,275.

*Anthony Warren McGoldrick, deceased.* The 644
death of this man is established by the fact that his body was found on the launch. He left a mother, with whom he lived, as well as four brothers and four sisters. All but two of the brothers and sister were of full age. He was in the twenties and was apparently an unskilled laborer. On the entire case, I believe that the award recommended, $4,000, is somewhat inadequate and that the amount should be $5,000. Funeral expenses not to exceed $275 are also a proper item of damage, making the total award in this case $5,275.

645

*Marcus Gonzales Navas, deceased.* The death of this man is undisputed. The only issue relates to the damages. The commissioner recommended $2,500. Navas was survived by two sisters who lived here with him. Their testimony is to the effect that they had been supported by their brother, who had turned over his entire wages to them, and that since his death they had been obliged to get work. It appears, however, that these two sisters had entered the United States only two months before the accident and had then

declared that they were able to earn their own livelihood. It is to be presumed that they would have been working at the time of their brother's death, but for the fact of their recent arrival here. The brother had been earning something over $30 a week for several months prior to the accident and was apparently an unskilled laborer. I believe that the amount recommended will not fully recompense the sisters for their pecuniary loss and find that such loss is $4,000. The award in this
647 case will be $4,000.

*Bert Ramsland, deceased.* Ramsland was one of the men who had applied for work prior to the accident. A body identified as his was taken from the river three months later. There is no direct evidence that he was lost in the "Linseed King," but in my opinion the circumstantial proof of that fact is convincing. He was survived by two brothers and a sister, all adults. He did not contribute to their support to any extent, and none of them had seen him in years. No dependency was proved. In view of these facts, the amount set
648 by the commissioner, $1,500, seems proper, to which will be added the amount paid for the funeral, up to $275. The award will therefore be $1,775.

*Darnelly Barker.* This case, as well as the cases discussed hereafter, involves a survivor of the accident and is for personal injuries. Barker was an employee of the petitioner, but from the testimony appears to have been working as a longshoreman. His case is therefore properly before this court. The amount recommended by the com-

missioner, $1,000, is fair compensation for the injuries and will be the amount of the award.

*Carl Bremer.* Bremer was seeking employment. He undoubtedly suffered from immersion and exposure, but no permanent injuries or diminution of earning capacity are shown. The amount recommended, $500, is fair and reasonable.

*James P. Campbell.* Campbell boarded the boat in response to the petitioner's advertisement. In addition to exposure and tonsilitis, he sustained a cut on the hand from smashing a window in his escape from the cabin. His earning capacity has not been impaired. The amount recommended, $500, is proper and will be the award. 650

*Frank Charles.* This claimant asserted that the accident had left him in a nervous condition. The commissioner found, however, that there was no substance to the claim, judging from the man's appearance and conduct as a witness, and concluded that the injuries incurred were only temporary. From a reading of the record, I think that the commissioner's conclusions were sound, and that the figure specified by him, $500, is adequate. 651

*Aaron Cooper.* This claimant, a non-employee, also set up permanent injuries. The issue as to whether there were permanent injuries is one of fact and was resolved by the commissioner against the claimant. The amount set forth in the report, $500, is approved.

*Harry Gold.* The claimant alleged and attempted to prove permanent injury to his nervous

652 *Opinion by Judge Patterson, December 17, 1930.*

system. The weight of evidence is to the contrary. The commissioner's award of $750 to cover the temporary disability is approved.

*William Ice.* This claimant suffered from exposure and was laid up for one week. Several weeks later he contracted pneumonia. The proof tends to show that the pneumonia was not traceable to the accident. The recommended award of $500 will stand.

653

*Frederick Ludwig.* This claimant testified to injuries of a permanent sort and to large earnings prior to the accident as contrasted with more modest wages since. The claimant has no just grievance over the figure recommended, $1,000 and it will be confirmed.

*Padro Mitchell.* Mitchell is undoubtedly in poor physical condition at the present time. The evidence, practically undisputed, shows that his ailments are due to syphilis contracted prior to the accident and apparently not aggravated by it.
654 The case is therefore one of temporary disability, so far as the petitioner's liability is concerned. The claimant received $255.50 from the petitioner and signed a release. The commissioner doubted whether Mitchell fully understood the effect of the release and recommended an award of $300 in addition. Mitchell has no fair grievance with the result, and the commissoner's action is approved.

*Kenneth Norgrove.* Norgrove was not listed by the petitioner as an employee. He testified that he had been employed previous to the accident. How-

ever, that may be, his work had been unloading ships, and therefore the compensation act has no application. His injuries were not permanent. The amount fixed by the commissioner, $500, is reasonable and is approved.

*Robert L. Proven.* This claimant was a ship steward temporarily out of employment. He suffered from exposure and from cuts on the arms and legs. The commissioner found $500 to be fair compensation, and the award will be for this 656
amount.

*John Joseph Sullivan.* In addition to temporary disabilities, this claimant claims injuries of a more permanent nature. Numbness of hands and sleeplessness are said to have resulted from the accident. The commissioner found, however, that there had been no real impairment of earning capacity. The issue was purely one of fact, and the decision of the commissioner on that issue was not without evidence to sustain it. The amount recommended, $500, will stand as the award. 657

The judgment will be settled upon five days' notice.

(Sgd.) ROBERT P. PATTERSON,
U. S. D. J.

December 17th, 1930.

658 **Order to Show Cause.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| In the Matter<br>of<br>The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her 659 engines, etc., for Limitation of Liability. | A. 94/237. |

It appearing from the annexed affidavit of D. Roger Englar, verified the 28th day of January, 1931, that the petitioner herein desires a rehearing on those exceptions heretofore filed to the Commissioner's report herein, which raise the question or issue of whether or not certain men who were killed or injured as a result of the sinking of the motorboat "Linseed King," to wit, the men referred 660 to in the opinion herein dated December 17, 1930, as "men who had applied for employment several days prior to December 20th, had been given slips of paper with numbers, and had been told to report for work on December 19th, to unload a ship," were employees of the petitioner at the time they were so killed or injured and were within the operation of the New Jersey Workmen's Compensation Law, and it further appearing that the petitioner claims that a hearing before the Court has not been had on said exceptions or the questions or issues raised thereby, now therefore, it is

*Order to Show Cause.* 661

ORDERED that the parties hereto or their proctors show cause before me at my chambers on the 12th floor of No. 233 Broadway, City, County and State of New York, on the 2nd day of February, 1931, at 4 P. M. as to why a rehearing as aforesaid should not be had.

Service of this order upon the proctors for the various claimants herein before 4 P. M. on the 29th day of January, 1931, shall be sufficient.

ROBERT P. PATTERSON. 662

663

664 **Affidavit of D. Roger Englar.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| In the Matter<br>of<br>The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability. | A. 94/237. |

665

State of New York, }
County of New York, } ss.:

D. ROGER ENGLAR, being duly sworn, deposes and says: I am a member of the firm of Bigham, Englar, Jones & Houston, proctors for petitioner in this matter and am familiar with the proceedings had herein.

666 Exceptions were filed to the Commissioner's report in this proceeding, and certain of said exceptions were heretofore argued orally before the Court and briefs submitted on certain of the issues raised thereby. In the opinion thereafter rendered by the Court the men who were injured or killed in the "Linseed King" disaster were classified into groups, and in said opinion the Court said:

> "There is still a third group of men who had applied for employment several days prior to December 20th, had been given slips of paper

with numbers, and had been told to report for work on December 19th, to unload a ship. These men had reported on December 19th, as instructed. They were then told that the ship had not arrived and that they should return for work the next day. They were returning when the disaster happened. They had done no work and had earned no compensation. The commissioner held that these men were employees. I do not agree. In my opinion, the status of employer and employee had not yet 668
come into existence, and the compensation statute does not apply to these cases."

It was my understanding that the argument heretofore had before the Court on the exceptions to the Commissioner's report and the briefs heretofore submitted, were limited to three questions, namely, first, whether or not the New Jersey Workmen's Compensation Law applied to the men who were admittedly employees; second, the question of the amount of damages to be awarded to the men who were admittedly not employees, and third, the question of interest on such awards. I had under- 669
stood that the question of whether or not any particular men or class of men were employees, would be determined by the Court following further argument and/or the submission of further briefs following the determination of the three questions above mentioned. In none of the briefs submitted by my firm on behalf of the petitioner, has any argument been made, either on the facts or on the law, as to whether or not the men referred to in the above quotation from the opinion of the Court, were employees. The petitioner desires to be heard

on this point, and I accordingly respectfully request that an order to show cause may issue directing the claimants herein to show cause as to why a rehearing should not be had on the sole question of whether or not the men referred to in the above excerpt from the opinion were employees of the petitioner at the time of the disaster, and on the question of whether, if they were employees, they were within the New Jersey Workmen's Compensation Law.

No previous application for this or any similar order has heretofore been made.

D. ROGER ENGLAR.

Sworn to before me this
28th day of January, 1931.

EDWARD A. QUINLAN,
(Seal) Notary Public.
Kings County No. 7.
Kings County Registers No. 2007.
N. Y. Co. Cl'k No. 18, Reg. No. 2Q11.
Commission expires March 30, 1932.

## Memorandum by Judge Patterson, Dated February 9, 1931. 673

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability. A. 94/237. 674

MEMORANDUM.

PATTERSON, D. J. The petitioner applied for a re-hearing as to the men who had applied for work prior to the day of the disaster and had been given tickets. I granted the motion. After consideration of the briefs and oral arguments, I have determined to adhere to the conclusions stated in my 675 opinion: first, that the relationship of employer and employee had not come into operation as to these men; and, second, that in any event the employment offered to them was to unload a ship and was therefore maritime work. The New Jersey Workmen's Compensation Act is not a bar to the maintenance of the claims filed by these men or by their personal representatives.

(Sgd.) ROBERT P. PATTERSON,
U. S. D. J.

February 9, 1931.

676 **Order Denying the Motion.**

At a Stated Admiralty Term of the United States District Court for the Southern District of New York, at the Post Office Building, in the Borough of Manhattan, City and State of New York, on the 25th day of February, 1931.

Present—Hon. ROBERT P. PATTERSON,
District Judge.

677 In the Matter
of
The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

678 The petitioner having moved on an order to show cause, signed by the Honorable Robert P. Patterson, for a rehearing on those exceptions heretofore filed to the Commissioner's report herein, which raise the question or issue of whether or not certain men who were killed or injured as a result of the sinking of the motorboat "Linseed King," to wit, the men referred to in the opinion herein dated December 17, 1930, as "men who had applied for employment several days prior to December 20th, had been given slips of paper with numbers, and had been told to report for work on Decem-

ber 19th, to unload a ship," were employees of the petitioner at the time they were so killed or injured and were within the operation of the New Jersey Workmen's Compensation Law, and as more fully specified in the said order to show cause; and the same having been heard on the return day of the said order to show cause, February 2, 1931;

Now, after reading and filing the said order to show cause and the affidavit of D. Roger Englar, sworn to the 28th day of January, 1931, annexed 680
to said order to show cause, and the Court after hearing counsel for petitioner in support of the motion granted a re-hearing; and after consideration of the briefs and the oral argument by counsel for petitioner and for claimants; and the Court after due deliberation having rendered a written memorandum decision, dated February 9, 1931, holding that the New Jersey Workmen's Compensation Act is not a bar to the maintenance of the claims filed by these men or their personal representatives; it is

Now, on motion of Elizabeth Robinson and 681
Lucien V. Axtell, proctors for claimants,

ORDERED, that the motion be and it hereby is denied.

Enter,

ROBERT P. PATTERSON,
U. S. D. J.

682 **Findings of Fact and Conclusions of Law.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING."

683

DECISION.

The above proceeding having been brought on before me on exceptions to the report of the Special Commissioner, and the parties hereto having appeared by their respective attorneys, I now decide and find as follows:

FINDINGS OF FACT.

684 1. The motorboat "Linseed King" was owned by the petitioner, Spencer Kellogg and Sons, Inc., and was operated by the petitioner for the purpose of carrying workmen and applicants for employment across the Hudson River between New York City and its plant at Edgewater, New Jersey.

2. At the time of the disaster of December 20th, 1926, the motorboat "Linseed King," on a trip from New York City to the petitioner's plant at Edgewater, New Jersey, carried not only employees but also men who made the trip as applicants for employment. The disaster occurred on navigable

waters within the territory of New York, and the deaths and injuries involved in this case occurred in New York.

3. No fares were charged by the petitioner and the general public was not invited to ride, but the launch was used as a private carrier operated by the petitioner for the purpose of transporting its own employees to and from their place of employment, and on occasion for transporting persons applying for employment at the petitioner's plant. 686

4. As a result of the sinking of the motorboat "Linseed King" in the Hudson River on December 20th, 1926, a number of men lost their lives or sustained personal injuries.

5. Among those persons who it is claimed lost their lives or sustained personal injuries, the following men had been assigned an employment number, had on previous days performed work at the petitioner's plant, and were being transported to the petitioner's plant on the motorboat "Linseed King" as an incident to their employment, which was non-maritime: 687

James Alexander
Charles D. Burns
Samuel Daniels
Domingo DeMeza
Frank Eberle
Henry McEachim
Frank Marques
Fernando Martin
Adolphus Mathias

688 *Findings of Fact and Conclusions of Law.*

Carlos Morales
George Nemetz
Uriah Pusey
Clifford Rawlins
John Benjamin Samuels
John Turner
John Castro
Joseph Hamilton
Eric Martin
Fred Sumner
689 Nathaniel Wisdom
Ernest Boyer
David H. Clarke
Balfour Corriette
Thomas Coyle
Victor Kreminsky
Juan C. Munoz
Eladio Ortiz
Carlos C. Thigpen
Paul Boots
Dominick Darco
Felipe Durate
Junius Johnson
690 Bernard Lang
Louis Ortiz

6. That as to certain other men who lost their lives or sustained personal injuries, I find the following facts:

(a) They had presented themselves at the petitioner's plant in New Jersey and applied for employment several days prior to December 20th, 1926. After being interviewed by the petitioner's employment manager, the name

of each man was entered on a numbered time card, and a stub, bearing the same number, was torn from the bottom of each card and given to the man whose name it bore. The men were then told that their services were required to unload a ship which was expected to arrive at petitioner's dock at Edgewater, New Jersey, early on the morning of Sunday, December 19th, 1926, and they were told to report for work at 7:00 o'clock on that morning. 692

(b) These men had reported on December 19th, as instructed, but the ship had not arrived as expected, and the men were told that they should return on the following day, Monday, December 20th, 1926, reporting on the New York side at 6:00 A. M.

(c) These men were returning, in accordance with these instructions when the disaster occurred.

(d) The expected steamer (The Tercero) had actually arrived and docked at petitioner's plant during the day of the 19th, so that when these men boarded the "Linseed King" on the morning of December 20th, the work for which they had been told to report was actually available. 693

(e) Up to the time of the disaster these men had done no work, and earned no compensation.

(f) As to these men, the work would have been to unload the steamer "Tercero."

694 *Findings of Fact and Conclusions of Law.*

(g) The names of the men in the above class and the damages sustained by the survivors or by the next of kin of deceased persons are as follows:

DECEASED PERSONS.

| | |
|---|---|
| Roy Amlaw | $12,213.00 |
| Joseph Bassnet | 10,000.00 |
| David Hicks | 7,727.20 |
| Andrew S. Murphy | 7,176.00 |
| 695 Paul Saul | 6,000.00 |
| George Sims | 4,000.00 |
| Thomas Anthony Connolly | 5,275.00 |
| Joseph Dobransky | 2,250.00 |
| James Heap | 4,000.00 |
| John W. Kakos | 5,275.00 |
| Bert Ramsland | 1,775.00 |

SURVIVORS.

| | |
|---|---|
| Carl Bremer | $ 500.00 |
| Aaron Cooper | 500.00 |
| Harry Gold | 750.00 |
| 696 William Ice | 500.00 |
| Frederick Ludwig | 1,000.00 |
| Padro Mitchell | 300.00 |
| Robert L. Proven | 500.00 |
| John Joseph Sullivan | 500.00 |

7. That as to certain other men who lost their lives or sustained personal injuries, the following situation existed:

(a) They boarded the motorboat "Linseed King" looking for work, in response to an ad-

vertisement for laborers which appeared in several New York newspapers.

(b) The names of these men and the damages sustained by the survivors or by the next of kin of deceased persons are as follows:

DECEASED PERSONS.

| | |
|---|---|
| Thomas Davis | $ 5,000.00 |
| McBean H. Ifill | 10,000.00 |
| John Brennan | 4,000.00 |
| Samuel Griffith | 2,000.00 |
| John Hartmann | 5,275.00 |
| Anthony Warren McGoldrick | 5,275.00 |

SURVIVORS.

| | |
|---|---|
| James B. Campbell | $ 500.00 |
| Frank Charles | 500.00 |

8. All contracts of employment between the petitioner and the employees involved in this disaster were made in New Jersey.

9. No written notice was given by any party prior to the accident, whereby an election against the compensation system was made.

10. Alfred Roberts was a regular employee of the petitioner, working as a chauffeur, but he also assisted in operating the "Linseed King" when he was on that vessel, and the petitioner knew and approved of this practice, and he was so employed at the time of the disaster.

11. The widow and next of kin of Alfred Roberts have sustained damage in the amount of $20,000.00.

700 *Findings of Fact and Conclusions of Law.*

12. Darnelly Barker and Kenneth Norgrove were employees of the petitioner engaged in unloading ships and sustained damages for personal injury in the amounts of $1,000.00 and $500.00, respectively.

13. That as to the claim advanced by the personal representative of Matthew Leibold, deceased, I find that no body identified as that of Leibold was ever recovered; there was no reason for be-
701 lieving that any such man was on the "Linseed King"; Leibold could not possibly have caught the "Linseed King" if he had left home at the time set by the claimant; no one by the name of Leibold lived with the claimant or was known to the other tenants in the house; the claim is a fabrication.

14. That as to the claim advanced by the personal representative of Arthur Johnson, deceased, I find that the claimant, who contended that she was the common law wife of Arthur Johnson, had in fact been ceremonially married to one Arthur
702 Hendricks, and that Hendricks was still living on December 20th 1926; the testimony of the claimant is unworthy of belief; there is no foundation for this claim.

15. As to the claim advanced by the personal representative of Joseph Claudius Vizcay, deceased, I find that the relationship between the claimant and Joseph Claudius Vizcay was undoubtedly meretricious at first and remained so throughout; that neither party considered the connection a permanent one; that Edmund Vizcay,

the alleged son of Joseph Claudius Vizcay, the deceased, was born in 1917; that Emily Rockwood, the mother of this child, was ceremonially married to one Cain in 1916; that the relationship between Vizcay and Emily Rockwood was meretricious.

16. As to the claim advanced by the personal representative of William Graham, deceased, I find that there is nothing to show that Graham is dead or that he was a passenger on the "Linseed King"; there is no evidence that he ever contributed to the support of the claimant or that he would ever have contributed anything to her support. 704

17. No proof whatever was submitted in support of the claims of the following persons:

Carl B. Bostrom
Thomas Jones
Louis Vega

18. Claims relating to the following persons were settled at various times during this proceeding: 705

Marcos Gonzales Navas
Abraham Burke
Juan Fernandez
Luis Herrera
Manuel Antonis Varouxaki
Harry Jackson
Paul Boots

CONCLUSIONS OF LAW.

1. That the persons named in paragraph "5" of the Findings of Fact were employees of the peti-

706 *Findings of Fact and Conclusions of Law.*

tioner, within the meaning of the New Jersey Workmen's Compensation Act, laws of 1911, ch. 95 as amended.

2. That the persons named in paragraph "6" of the Findings of Fact were not employees of the petitioner, within the meaning of the New Jersey Workmen's Compensation Act, laws of 1911, ch. 95 as amended, or if they were, the work for which they were employed was the unloading of a ship, which would be maritime work, and therefore pre-
707 vent the application of the New Jersey Workmen's Compensation Law.

3. That the persons named in paragraph "7" of the Findings of Fact were not employees of the petitioner, within the meaning of the New Jersey Workmen's Compensation Act, laws of 1911, ch. 95 as amended.

4. That as to all employees of the petitioner who were on the "Linseed King" at the time of the disaster, injury or death came from an accident arising out of and in the course of their employment.

708 5. That the elective system of compensation embodied in the New Jersey Workmen's Compensation Act, governed the relations between the petitioner and all of the employees hired for non-maritime work.

6. That the remedy provided by the New Jersey Workmen's Compensation Act, was the exclusive remedy for all such employees and their dependents.

7. That there has been no waiver by the petitioner of its right to insist that all non-maritime

employees be confined to their remedy under the compensation statute.

8. That the elements of equitable estoppel are lacking for the reason that the petitioner has maintained throughout these proceedings that the employees have no claim against the petitioner sounding in damages, but have simply the right to secure compensation awards under the compensation statute.

9. That the petitioner has not rescinded its contract to pay compensation by reason of its filing a petition for limitation of liability. 710

10. That this Court has not the authority or the means to determine the amount of, or enforce payments, as provided under the New Jersey Workmen's Compensation Law.

11. That neither the claimants, who were regular employees of the petitioner, hired to do non-maritime work, nor the claimants who are personal representatives of the deceased non-maritime employees, can be given relief in this Court either by damage awards or by awards similar to Workmen's Compensation. 711

12. That the sole remedy of such claimants whose names are listed in paragraph "5" of the Findings of Fact is to file claims with the New Jersey Workmen's Compensation Bureau, and their claims in this proceeding are therefore dismissed.

13. The New York Death Statute (Decedent's Estate Law, Section 130-134) governs the right to recover for the deaths of the persons listed in

paragraphs "6," "7" and "10" of the Findings of Fact. Interest at six per cent per annum from date of death, December 20, 1926, is recoverable.

14. That the personal representatives of deceased persons named in paragraph "6" of the Findings of Fact are entitled to recover in this proceeding the damages as there found and set opposite their respective names, with interest at six per cent per annum from December 20th, 1926.

713

15. That the survivors listed in paragraph "6" of the Findings of Fact are entitled to recover in this proceeding the damages as there found and set opposite their respective names, without interest, prior to the signing of the decree.

16. That the personal representatives of deceased persons named in paragraph "7" of the Findings of Fact are entitled to recover in this proceeding the damages as there found and set opposite their respective names, with interest at six per cent per annum, from December 20th, 1926.

714

17. That the survivors listed in paragraph "7" of the Findings of Fact are entitled to recover in this proceeding the damages as there found and set opposite their respective names, without interest, prior to the signing of the decree.

18. That the personal representative of Alfred Roberts, deceased, is entitled to recover in this proceeding the sum of $20,000.00, with interest at six per cent per annum from December 20th, 1926.

19. That Darnelly Barker and Kenneth Norgrove, are entitled to recover, respectively, the sums of $1,000.00 and $500.00, without interest.

20. That claims filed by the personal representatives of the following deceased persons be dismissed without costs:

Matthew Leibold
Arthur Johnson
Joseph Claudius Vizcay
William Graham 716

21. That claims filed by or on behalf of the following named persons be dismissed without costs, for the reason that no proof was offered in support of said claims:

Carl B. Bostrom
Thomas Jones
Louis Vega

22. That the petitioner is entitled to a permanent injunction restraining the prosecution of any claim, suit or action arising out of the death or personal injury of the following named persons: 717

Abraham Burke
Juan Fernandez
Luis Herrera
Manuel Antonis Varouxaki
Harry Jackson
Paul Boots

Dated, New York, February 14, 1931.

.....

U. S. D. J.

718 **Final Decree.**

At a Stated Term of the United States District Court for the Southern District of New York, at the United States Court and Post Office Building, Borough of Manhattan, City of New York, on the 24th day of February, 1931.

Present—Hon. ROBERT P. PATTERSON,
District Judge.

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|---|---|
| In the Matter of The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime. | A. 94/237. |

720 WHEREAS, a petition was filed herein on the 4th day of March, 1927, by Spencer Kellogg & Sons, Inc., as owner of the Motorboat "Linseed King," her engines, etc., to limit its liability under Sections 4283 to 4285 of the Revised Statutes of the United States and Acts amendatory thereof and supplemental thereto for all loss, damage, injury and/or destruction occasioned by or resulting from the sinking of the Motorboat "Linseed King" on December 20th, 1926, while engaged in carrying persons from the foot of 95th Street, North River, Manhattan, to Edgewater, New Jersey, and the

petitioner having also in said petition prayed for exoneration from any and all liability resulting from the said collision, excepting liability under the New Jersey Workmen's Compensation Act; and

WHEREAS, a restraining order was duly made and entered in this Court on March 5th, 1927, in accordance with the rules and practices of this Court, restraining the beginning or prosecution or determining of any and all claims, suits, actions or legal proceedings of any nature or description 722 whatsoever except in the above entitled proceeding with liberty to any claimant to file his claim with the New Jersey State Workmen's Compensation Bureau; and

WHEREAS, pursuant to the order of this Court made and entered on March 5th, 1927, the said restraining order was duly served upon the New Jersey State Workmen's Compensation Bureau enjoining the hearing, prosecution or determination of any and all claims filed with the New Jersey State Workmen's Compensation Bureau until the hearing and determination of this limitation proceed- 723 ing; and

WHEREAS, a monition was duly issued out of this Court citing all persons claiming damages for any and all loss, destruction, damage or injury occasioned by the said alleged disaster or in connection with the voyage on which the motorboat "Linseed King" was then engaged, requiring such persons to appear before this Court and make due proof of their respective claims before George V. A. McCloskey, as Commissioner, on or before April

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12th, 1927, and public notice of such monition having been duly given as required by law and the practice of this court; and

WHEREAS, various claimants hereinafter mentioned duly filed claims in this proceeding and the said Commissioner duly reported such claims; and

WHEREAS, the proceeding came on to be heard upon the pleadings and proofs of the respective par-
725 ties and having been tried by this Court on January 12th to February 1st, 1928, inclusive, and the Court having filed its opinion in writing deciding that fault and negligence were committed in the navigation of the "Linseed King" in consequence of which injuries were sustained by survivors and numerous lives were lost, and that the occurrence was with the privity and knowledge of the petitioner; and

WHEREAS, an interlocutory decree was duly made and entered on the 26th day of March, 1928, whereby it was adjudged and decreed that petitioner,
726 Spencer Kellogg & Sons, Inc., is not entitled to exoneration from all liability nor to limitation of its liability as claimed by it in its petition, and whereby it was referred to Honorable Myer Nussbaum, as Commissioner, to take proofs as to the amount and validity of all claims filed herein and the applicability or inapplicability thereto of the New Jersey State Workmen's Compensation Law and to report thereon to this Court with the evidence taken before him, together with his opinion; and

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WHEREAS, Honorable Myer Nussbaum, as Commissioner, filed his report herein on the 9th day of July, 1930, allowing and awarding certain claims to the legal representatives of the deceased, and disallowing and failing to make awards in certain other claims all as follows:

| | |
|---|---|
| 1. Vera Alexander | $10,000.00 |
| 2. May A. Amlaw )<br>Lillian Mae Amlaw) | 12,000.00 |
| 3. James Keyes | 10,000.00 728 |
| 4. Abraham Burke | Settled |
| 5. Lena Burns | 15,000.00 |
| 6. Julia Daniels )<br>Mary Slaughter) | 5,000.00 |
| 7. Bessie Davis | 4,000.00 |
| 8. Margarita DeMeza | No award |
| 9. Anna Eberle | 11,000.00 |
| 10. Juan Fernandez | Settled |
| 11. Hilda Hicks | 7,500.00 |
| 12. Luis Herrera | Settled |
| 13. Millicent Ifill | 10,000.00 |
| 14. Anna Leibold | No award |
| 15. Nora McEachin | 8,000.00 729 |
| 16. Marie Marques | 8,000.00 |
| 17. John A. O'Melia)<br>Luis E. Feliu ) | 15,000.00 |
| 18. Celestine Matthias | 12,000.00 |
| 19. Josephine Morales | 12,000.00 |
| 20. Elizabeth Twohie (Annie Murphy) | 5,000.00 |
| 21. Marie Varga Nemets (Stephen Nemets) | 8,000.00 |
| 22. Adina Victoria Pusey | 15,000.00 |
| 23. Laura Rawlins | 5,000.00 |
| 24. Helen Roberts | 14,000.00 |

| | | |
|---|---|---|
| 25. | Edith Samuels | 7,500.00 |
| 26. | Paul Lieneck | 4,000.00 |
| 27. | Leola Turner | 10,000.00 |
| 28. | Francisca Castro)<br>Jose Reves ) | 3,000.00<br>Award to Mother |
| 29. | Emerance Hamilton | No award |
| 30. | Mary Johnson | No award |
| 31. | Mary Martin | 2,000.00<br>Award to Mother |
| 731 32. | Geneva Sims | 2,500.00<br>Award to Mother |
| 33. | Virginia Sumner | 2,000.00<br>Award to Father |
| 34. | Sadie Varouxaki | Withdrawn by claimant—<br>Claim by parents pending |
| 35. | Rose Viscay, Administratrix,)<br>Frank Rockwood, Guardian )<br>and Administrator ) | No award |
| 36. | Annabelle Wisdom | No award |
| 37. | Karl B. Bostrom | Dismissed—no proof<br>presented |
| 38. | Raymond Boyer | 1,600.00 |
| 732 39. | Caroline Nelson (Brennan) | 3,000.00 |
| 40. | Joseph Cassidy )<br>Albert E. Kane, Administrator) | 2,500.00 |
| 41. | Catherine Connolly | 2,500.00 |
| 42. | Angelina Corriette | 2,500.00 |
| 43. | James Coyle | 2,775.00 |
| 44. | Michael Dobransky | 2,000.00 |
| 45. | W. R. Southwick )<br>Sara Frances Southwick)<br>Administratrix ) | No award |
| 46. | Violet Forde | 2,000.00 |
| 47. | Margaret Hartmann | 2,500.00 |
| 48. | Robert F. Bell | 4,000.00 |

| | | |
|---|---|---|
| 49. Julia B. Jackson | 1,000.00 | |
| 50. John Kakos | 4,000.00 | |
| 51. Frank Labiak | 2,000.00 | |
| 52. Mary E. McGoldrick | 4,000.00 | |
| 53. Adolfo G. Dominguez | 2,500.00 | |
| 54. Emma Gonzalez Navas | 2,500.00 | |
| 55. Eladio Ortiz | 2,500.00 | |
| 56. Nils Ramsland | 1,500.00 | |
| 57. Marion B. Thigpen | 2,500.00 | |
| 58. Jorge Venega | Settled | |
| 59. Darnelly Barker | 1,000.00 | 734 |
| 60. Paul Boots | 500.00 | |
| 61. Carl Bremer | 500.00 | |
| 62. James P. Campbell | 500.00 | |
| 63. Frank Charles | 500.00 | |
| 64. Aaron Cooper | 500.00 | |
| 65. Dominick Darco | 500.00 | |
| 66. Felipe Durato | 500.00 | |
| 67. Harry Gold | 750.00 | |
| 68. William Ice | 500.00 | |
| 69. Junius Johnson | 500.00 | |
| 70. Thomas Jones | Dismissed—no proof | |
| 71. Bernard Lang | Dismissed | |
| 72. Frederick Ludwig | 1,000.00 | 735 |
| 73. Padro Mitchell | 300.00 | |
| 74. Kenneth Norgrove | 500.00 | |
| 75. Louis Ortiz | 500.00 | |
| 76. Robert L. Proven | 500.00 | |
| 77. John Joseph Sullivan | 500.00 | |
| 78. Louis Vega | Dismissed—no proof | |

and

WHEREAS, the Commissioner held and determined in his report that the damages as awarded

were to bear interest from the date of his report; and

WHEREAS, the Commissioner held and determined in his report that the New Jersey Workmen's Compensation Act was inapplicable to the claims filed in this proceeding, because the tort was maritime, and because the nature of the proceeding conferred upon the Admiralty Court jurisdiction to hear and determine each and every claim of any
737 nature whatsoever growing out of the disaster; and

WHEREAS, exceptions to the Commissioner's report were duly filed by petitioner and by claimants, and the said exceptions were argued before the Court on September 2nd, 1930, and this Court, on December 17th, 1930, filed an opinion in writing, and on February 16th, 1931, filed findings of fact and conclusions of law wherein and whereby the Court found as follows:

(1) That the claimants who were regular em-
738 ployees of the petitioner, hired to do non-maritime work, and the claimants who are the personal representatives of deceased non-maritime employees cannot be given relief in this Court, and that their remedy is to file claims with the New Jersey Workmen's Compensation Bureau and to proceed with the proof of their claims in accordance with the provisions of the laws of the State of New Jersey, and to this extent sustained petitioner's exceptions to the Commissioner's report in so far as they apply to the claims listed in the first ordered clause of this decree; and

(2) That claimant's and/or claimant's intestates who were merely *looking for work and were not* employees were not governed by the New Jersey State Workmen's Compensation Act and could recover damages for death or injury in this Court; and

(3) That claimants and/or claimants' intestates who applied for employment several days prior to December 20, 1926, and who had been interviewed by petitioner's employment manager, and whose 740
names were entered on a numbered time card, and who were given a stub bearing the same number, and who were told that their services were required to unload a ship which was expected to arrive at petitioner's dock at Edgewater, N. J., early on the morning of December 19, 1926, were not governed by the New Jersey State Workmen's Compensation Act, and said claimants are entitled to recover and receive damages for death or injury and for such amounts as are hereinafter set forth, and to this extent overruled the petitioner's exceptions to the Commissioner's report in so far as they apply to the following claims of or on behalf of: 741

Roy Amlaw,
James Basnett (Joseph Basnett)
David Hicks,
Andrew S. Murphy,
Paul Saul,
George Sims,
Thomas Connolly,
Joseph Dobransky,
James Heap,
John Kenny (Kakos),

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Bert Ramsland,
Carl Bremer,
Aron Cooper,
Harry Gold,
William Ice,
Fred Ludwig,
Padro Mitchell (Mipchicia),
Robert Proven,
John Sullivan,

743 and

(4) That the reasonable funeral expenses, not to exceed $275.00, paid by or on behalf of claimants, except such amounts as were paid by petitioner, should be allowed and added to the awards and to this extent sustained claimants' exceptions to the Commissioner's report in so far as they applied to the claims on behalf of:

Roy Amlaw,
David Hicks,
Andrew S. Murphy,
744 Thomas Anthony Connolly,
Joseph Dobransky,
John Hartman,
John W. Kakos,
Anthony Warren McGoldrick,
Bert Ramsland,

and

(5) That claimants who are entitled to recover in this Court for wrongful death under the New York Death Statutes should recover and receive in-

745

terest at the rate of 6% per annum from December 20th, 1926, which interest is to be added to the award as provided by Section 132 of the New York Decedent's Estate Law and to this extent sustained claimants' exceptions to the Commissioner's report; and

(6) That the awards in the claims on behalf of:

Thomas Davis,
Andrew S. Murphy,
Alfred Roberts,
Paul Saul,
George Sims,
John Brennan,
Thomas Anthony Connolly,
John Hartman,
John W. Kakos,
Anthony Warren McGoldrick,
Mareos Gonzales Navas,

746

are inadequate and claimants' exceptions to the inadequacy of the awards are sustained to the extent that they were increased by the Court as hereinafter set forth; and

747

(7) That claimants' exceptions to the inadequacy of the awards in the claims of or on behalf of:

Roy Amlaw,
Joseph Bassnet,
David Hicks,
McBean H. Ifill,
Joseph Dobransky,

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Samuel Griffith,
James Heap,
Bert Ramsland,
Darnelly Barker,
Carl Bremer,
James P. Campbell,
Frank Charles,
Aaron Cooper,
Harry Gold,
William Ice,
749 Frederick Ludwig,
Padro Mitchell,
Kenneth Norgrove,
Robert E. Proven,
John J. Sullivan,

should be overruled; and

(8) That claimants' exceptions to the report of the Commissioner in failing to make awards for the benefit of the widows in the claims of Joseph Claudius Viscay and George Sims should be overruled; and

750 (9) That petitioner's exceptions to the awards made in the claims of or on behalf of:

Roy Amlaw,
Joseph Bassnet,
Thomas Davis,
Davis Hicks,
McBean H. Ifill,
Andrew S. Murphy,
Alfred Roberts,
Paul Saul,
George Sims,

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Thomas Anthony Connolly,
Joseph Dobransky,
James Heap,
John W. Kakos,
Marcos Gonzales Navas,
Bert Ramsland,
Darnelly Barker,
Paul Boots,
Carl Bremer,
Aaron Cooper,
Harry Gold,
William Ice,
Frederick Ludwig,
Padro Mitchell,
Eric Martin,
Kenneth Norgrove,
Robert L. Proven,

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should be overruled; and

(10) That except as stated in paragraphs "1" to "9" hereof, confirmed the report of the Commissioner, and the costs of claimants having been taxed in the amounts hereinafter stated, and the Commissioner's fee in the sum of $10,000.00 for services having been allowed;

753

Now, it is by the Court

ORDERED, ADJUDGED AND DECREED:

FIRST.—That the claimants on behalf of the following:

James Alexander,
Charles Burns,
Samuel Daniels,

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Domingo De Meza,
Frank Eberle,
Henry A. McEachin,
Frank S. Marques (Martin),
Fernando Martin,
Adolphus Mathias,
Carlos Morales,
George Nemets,
Uriah Pusey,
Clifford Rawlins,
755 John Benjamin Samuels,
John A. Turner,
John Castro,
Joseph Hamilton,
Eric Martin,
Fred Sumner,
Nathaniel Wisdom,
Ernest Boyer,
David H. Clark,
Balfour Corriette,
Thomas Coyle,
Victor Kreminsky,
Juan C. Munoz,
756 Eladio Ortiz,
Carlie C. Thigpen,
Dominick Darco,
Felipe Durate,
Junius Johnson,
Bernard Lange,
Louis A. Ortiz,

cannot be given relief in this Court, and that the aforesaid claimants may proceed to file their claims with the New Jersey Workmen's Compensation Bureau and proceed with the proof of their

claims in accordance with the provisions of the Laws of the State of New Jersey.

SECOND.—That the default of all persons who may have sustained or may claim for any loss, damage, injury or destruction resulting or arising from, or growing out of the sinking of the Motorboat "Linseed King," and who have not heretofore presented or filed claims in this proceeding be and the same hereby is entered, and that all claims which have not been presented or filed in this proceeding be and the same hereby are forever barred, and that the petitioner, Spencer Kellogg & Sons, Inc., be and it hereby is discharged from all liability in respect thereto. 758

THIRD.—That all persons who filed claims herein, and all other persons whatsoever claiming, or who may hereafter claim for any loss, damage, injury or destruction, or any matter whatsoever, in any way resulting or arising from or growing out of the aforesaid collision be and they hereby are perpetually restrained and enjoined from bringing or instituting and from prosecuting any action, suit or proceeding, of whatever nature, or any cause whatsoever, in any country or jurisdiction, against the petitioner, Spencer Kellogg & Sons, Inc., or against the Motorboat "Linseed King," for any loss, damage, injury or destruction done, suffered, occasioned by or resulting from the aforesaid disaster, except that claimants referred to in paragraph "First" hereof may file their claims with the New Jersey Workmen's Compensation Bureau and proceed with the proof of their claims in accordance with the provisions of the Laws of the State of New Jersey. 759

760 *Final Decree.*

FOURTH.—That the following claimants recover herein from the petitioner, Spencer Kellogg & Sons, Inc., the sums set opposite their respective names, together with interest at the rate of six per cent. per annum from December 20, 1926, to the date of this decree and with costs as indicated:

| | |
|---|---|
| 1. James Keyes, as Administrator of Joseph Bassett, deceased | $10,000.00 |
| Interest | 2,500.00 |
| 761 Costs | 88.07 |
| Total | $12,588.07 |
| 2. Bessie Davis, as Administratrix of Thomas Davis, deceased | $ 5,000.00 |
| Interest | 1,250.00 |
| Costs, retaxed | 75.07 |
| Total | $ 6,325.07 |
| 3. Hilda M. Hicks, as Administratrix of David Hicks, deceased | $ 7,727.20 |
| 762 Interest | 1,931.80 |
| Costs, agreed upon | 26.00 |
| Total | $ 9,685.00 |
| 4. Millicent Ifill, as Administratrix of McBean H. Ifill, deceased | $10,000.00 |
| Interest | 2,500.00 |
| Costs | 73.05 |
| Total | $12,573.05 |

| | |
|---|---|
| 5. Elizabeth Twohie, as Administratrix of Andrew S. Murphy, deceased | $ 7,176.00 |
| Interest | 1,794.00 |
| Costs | 75.07 |
| Total | $ 9,045.07 |
| 6. Helen Roberts, as Administratrix of Alfred Roberts, deceased | $20,000.00 |
| Interest | 5,000.00 |
| Costs, agreed upon | 66.50 764 |
| Total | $25,066.50 |
| 7. Paul Lieneck, as Administrator of Paul Saul, deceased | $ 6,000.00 |
| Interest | 1,500.00 |
| Costs | 100.99 |
| Total | $ 7,600.99 |
| 8. Geneva Sims, as Administratrix of the Estate of George Sims, deceased, for the sole benefit of Amy Sims | $ 4,000.00 765 |
| Interest | 1,000.00 |
| Costs, agreed upon | 66.50 |
| Total | $ 5,066.50 |
| 9. Robert F. Bell, as Administrator of John Brennan, deceased | $ 4,000.00 |
| Interest | 1,000.00 |
| Costs | 106.12 |
| Total | $ 5,106.12 |

766 *Final Decree.*

| | |
|---|---|
| 10. Catherine Connolly, as Administratrix of Thomas Anthony Connolly, deceased | $ 5,275.00 |
| Interest | 1,318.75 |
| No costs taxed | |
| Total | $ 6,593.75 |
| 11. Michael Dobransky, as Administrator of Joseph Dobransky, deceased | $ 2,250.00 |
| 767 Interest | 562.50 |
| Costs | 88.82 |
| Total | $ 2,901.32 |
| 12. Violet Forde, as Administratrix of Samuel Griffith, deceased | $ 2,000.00 |
| Interest | 500.00 |
| No costs taxed | |
| Total | $ 2,500.00 |
| 13. Margaret Hartmann, as Administratrix of John Hartmann, de- | |
| 768 ceased | $ 5,275.00 |
| Interest | 1,318.75 |
| Costs | 75.07 |
| Total | $ 6,668.82 |
| 14. Robert F. Bell, as Administrator of James Heap, deceased | $ 4,000.00 |
| Interest | 1,000.00 |
| Costs, retaxed | 75.07 |
| Total | $ 5,075.07 |

| | |
|---|---|
| 15. John Kakos, as Administrator of John W. Kakos, deceased | $ 5,275.00 |
| Interest | 1,318.75 |
| Costs, retaxed | 75.07 |
| Total | $ 6,668.82 |
| 16. Mary E. McGoldrick, as Administratrix of Anthony Warren McGoldrick, deceased | $ 5,275.00 |
| Interest | 1,318.75 |
| Costs | 75.07 770 |
| Total | $ 6,668.82 |
| 17. Nils Ramsland, as Administrator of Bert Ramsland, deceased | $ 1,775.00 |
| Interest | 443.75 |
| Costs retaxed | 75.07 |
| Total | $ 2,293.82 |
| 18. Mae A. Amlaw, as Administratrix of the Estate of Roy A. Amlaw, deceased | $12,213.00 771 |
| Interest | 3,053.25 |
| Costs | 75.07 |
| Total | $15,341.32 |

Provided, however, that no money shall be paid to Mae A. Amlaw, Administratrix of the Estate of Roy A. Amlaw, until a bond is filed as required by the rules of the Surrogate's Court of New York County, to secure the payment of the amount due the three children by the former wife of the deceased, Roy A. Amlaw, as provided by the New York Decedent's Estate Law.

772 *Final Decree.*

FIFTH.—That the following claimants recover the amounts indicated, with costs, but without interest, as indicated:

| | | |
|---|---|---|
| 1. Darnelly Barker ..... | $1,000.00 | |
| Costs, retaxed ..... | 20.00 | |
| Total ..... | | $ 1,020.00 |
| 2. Carl Bremer ..... | $ 500.00 | |
| Costs ..... | 20.00 | |
| 773 Total ..... | | $ 520.00 |
| 3. James B. Campbell ... | $ 500.00 | |
| Costs ..... | 75.07 | |
| Total ..... | | $ 575.07 |
| 4. Frank Charles ..... | $ 500.00 | |
| Costs, retaxed ..... | 75.07 | |
| Total ..... | | $ 575.07 |
| 5. Aaron Cooper ..... | $ 500.00 | |
| 774 Costs, retaxed ..... | 75.07 | |
| Total ..... | | $ 575.07 |
| 6. Harry Gold ..... | $ 750.00 | |
| Costs, retaxed ..... | 75.07 | |
| Total ..... | | $ 825.07 |
| 7. William Ice ..... | $ 500.00 | |
| Costs, retaxed ..... | 75.07 | |
| Total ..... | | $ 575.07 |

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| | | |
|---|---|---|
| 8. Fred Ludwig ..... | $1,000.00 | |
| Costs ..... | 75.07 | |
| Total ..... | | $ 1,075.07 |
| 9. Padro Mitchell ..... | $ 300.00 | |
| Costs ..... | 75.07 | |
| Total ..... | | $ 375.07 |
| 10. Kenneth Norgrove ... | $ 500.00 | |
| Costs, retaxed ..... | 20.00 | |
| Total ..... | | $ 520.00 |
| 11. Robert L. Proven .... | $500.00 | |
| Costs, retaxed ..... | 75.07 | |
| Total ..... | | $ 575.07 |
| 12. John Joseph Sullivan . | $ 500.00 | |
| Costs, retaxed ..... | 75.07 | |
| Total ..... | | $ 575.07 |

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SIXTH.—That claims filed by the following survivors and personal representatives of deceased persons be dismissed without costs: 777

Matthew Leibold, Arthur Johnson, Joseph Claudius Viscay, William Graham, Carl B. Bostrom, Thomas Jones, Louis Vega.

SEVENTH.—That claims arising out of the death or injury of the following named persons having been settled or withdrawn, as more fully appears from the report of the Special Commissioner and

from the stipulations filed herewith, all persons are perpetually restrained from the beginning or prosecution of any claim, suit, action or proceeding of any kind, in respect of the death or injury of such persons, against the petitioner, its officers, agents, servants or properties arising out of the sinking of the Motorboat "Linseed King" on December 20, 1926:

(a) Claims by personal representatives of
779 deceased persons;

Abraham Burke, Juan Fernandez, Luis Herrera, Manuel Antonis Varouxaki, Jorge Venegas, Harry Jackson, Marcos Gonzales Navas.

(b) Claim by survivor for personal injuries;

Paul Boots.

EIGHTH.—That all of the sums herein awarded shall bear interest at the rate of 6 per cent. per annum from the date of the entry of this decree until paid.

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NINTH.—That the petitioner, Spencer Kellogg & Sons, Inc., within ten days of the date of this decree, do pay to Honorable Myer Nussbaum, Commissioner, the sum of $10,000.00.

TENTH.—That if petitioner, Spencer Kellogg & Sons, Inc., does deposit the sums hereby awarded and/or decreed into the registry of the Court, in such event it shall further pay the fees and lawful charges of the Clerk of this Court for receiving, keeping and paying out the sums of money so de-

posited; and said Clerk is hereby ordered to distribute such monies so deposited to the claimants and/or the proctors of record of said claimants, in the proportions and amounts hereinabove specified and set forth.

ELEVENTH.—That fault and negligence were committed in the navigation of the "Linseed King," in consequence of which injuries were sustained by survivors and lives were lost; that the occurrence was with the privity and knowledge of the petitioner; and that the petitioner is not entitled to limitation of or exoneration from liability as prayed for in its petition. 782

TWELFTH.—That unless this decree be satisfied or an appeal be taken from this decree within the time allowed by law and the Rules and Practices of this Court, the petitioner do pay to claimants the awards, with interest and costs as ordered herein, within ten days after the entry of this decree, or show cause upon notice of two days, why execution should not issue against it and/or its goods, chattels, credits and lands, to enforce satisfaction thereof. 783

ROBERT P. PATTERSON,
U. S. D. J.

784 **Statement as to Substitution of Attorneys.**

Elizabeth Robinson and Lucien V. Axtell were duly substituted as attorneys of record in the place and stead of Silas B. Axtell in the claims set forth in the Claimants' Notice of Appeal and Claimants' Assignments of Error.

Elizabeth Robinson was duly substituted as attorney of record in the place and stead of Silas B. Axtell in the following claims:

Leola Turner, as administratrix of the Estate of John A. Turner, deceased.

785 Virginia Sumner, as administratrix of the Estate of Fred Sumner, deceased.

786

## Claimants' Notice of Appeal.

787

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

788

Sirs:

PLEASE TAKE NOTICE that the following claimants:

Vera Alexander, as adm. of Est. of James Alexander, decd.,
Lena Burns, adm. of Est. of Charles Burns, decd.,
Julia Daniels and Mary Slaughter, as adms. of Est. of Samuel Daniels, decd.,

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Margarita De Meza and Felipe Durate, as adms. of Est. of Domingo De Meza, decd.,
Anna Eberle, as adm. of Est. of Frank Eberle, decd.,
Marie Marques, as adm. of Est. of Frank S. Marques, decd.,
Luis E. Feliu, as adm. of Est. of Fernando Martin, decd.,
Celestina Mathias, as adm. of Est. of Adolphus Mathias, decd.,

790 *Claimants' Notice of Appeal.*

Josefina A. Morales, as adm. of Est. of Carlos Morales, decd.,
Stephen Nemets, as adm. of Est. of George Nemets, decd.,
Adina Victoria Pusey, as adm. of Est. of Uriah Pusey, decd.,
Laura Rawlins, as adm. of Est. of Clifford Rawlins, decd.,
Edith Samuels, as adm. of Est. of John Benjamin Samuels, decd.,
791 Francisca Gomes Castro and Jose Reyes, as adms. of Est. of John Castro, decd.,
Emerance Hamilton, as adm. of Est. of Joseph Hamilton, decd.,
Annie Belle Wisdom, as adm. of Est. of Nathaniel Wisdom, decd.,
Raymond Boyer, as adm. of Est. of Ernest Boyer, decd.,
Albert E. Kane, as adm. of Est. of David H. Clark, decd.,
Angelina Corriette, as adm. of Est. of Balfour Corriette, decd.,
James Coyle, as adm. of Est. of Thomas Coyle,
792 decd.,
Frank Labiak, as adm. of Est. of Victor Kreminsky, decd.,
Adolfo G. Dominguez, as adm. of Est. of Juan C. Munoz, decd.,
Mario Ortiz, as adm. of Est. of Eladio Ortiz, decd.,
Marion B. Thigpen, as adm. of Est. of Carlie C. Thigpen, decd.,
Dominick Darco, Felipe Durate, Junius Johnson, Bernard Lange and Louis A. Ortiz,

hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the final

decree entered herein in the office of the Clerk of this Court on the 25th day of February, 1931, and from each and every part of said decree, except in so far as the same adjudges that the disaster occurred with the privity and knowledge of the petitioner, and not entitled to limitation of or exoneration from liability, holds the petitioner in fault and allows certain claimants an award of damages, and allows interest at six per cent. per annum from date of death.

TAKE NOTICE FURTHER that claimants on said 794
appeal will bring up for review the following questions only:

(1) Whether the claims filed and proved by the aforesaid claimants in this limitation proceeding, pursuant to a monition issued out of this Court at the request of petitioner, were properly dismissed.

(2) Whether the bringing and maintaining of this limitation proceeding by petitioner under Sections 4283-4285 of the Revised Statutes of the 795
United States and acts amendatory thereof and supplemental thereto conferred jurisdiction upon this Court to give claimants a complete remedy in this proceeding.

(3) Whether the New Jersey Workmen's Compensation Act is or is not applicable in determining claimants' right to recover.

(4) Whether, in view of the fact that the death of claimants' intestates occurred within the territorial waters of New York, claimants are en-

796 *Claimants' Notice of Appeal.*

titled to recover under the New York Death Statutes in this proceeding.

(5) Whether the petitioner, by bringing this limitation proceeding in admiralty praying for a limitation of its liability under Sections 4283-4285 of the Revised Statutes of the United States and acts amendatory thereof and supplemental thereto, has thereby repudiated the alleged contract under the New Jersey Workmen's Compensation Act
797 so as to entitle claimants to treat the alleged contract as rescinded and to recover in this proceeding under the New York Death Statute.

(6) Whether the claimants' only remedy for petitioner's breach of the alleged contract under the New Jersey Compensation Act is to hold petitioner liable for interest on delayed payments.

(7) Whether the petitioner, having instituted and maintained this limitation proceeding and for more than four years enjoined the New Jersey Workmen's Compensation Bureau from hearing or
798 determining any claims arising out of this disaster, and having required claimants to proceed with the proof of their claims in this Court, has waived or otherwise lost the right, if any such right at any time existed, to confine claimants to the New Jersey Workmen's Compensation remedies and is estopped from denying the jurisdiction of this Court to give claimants a complete remedy.

(8) Whether the District Court, having assumed complete jurisdiction by enjoining all tribunals, including the Workmen's Compensation Bureau,

from hearing or determining the aforesaid claims, can now withdraw from the exercise of that jurisdiction.

(9) Whether the limited liability acts protected petitioner against Workmen's Compensation claims under the New Jersey Workmen's Compensation Act.

(10) Whether the petitioner, having elected to come into admiralty and to obtain the remedial benefits of the limited liability acts, a remedy wholly inconsistent with the Workmen's Compensation Act, is bound by such election. 800

(11) Whether, in view of the laches of petitioner and the prejudice to claimants, the Court did not abuse its discretion, if possessed of such discretion, to refer claimants to another forum.

(12) Whether the District Court should or should not have made awards to said claimants in adequate amounts and should or should not have passed on and decided the exceptions of said claimants to the awards made by the commissioner and the refusal to make awards in the claims of De Meza, Hamilton and Wisdom. 801

Dated, New York, March 4th, 1931.

Yours, etc.,

ELIZABETH ROBINSON and
LUCIEN V. AXTELL,
Proctors for Claimants,
Office & P. O. Address,
15 Moore Street,
Borough of Manhattan,
City of New York.

802 *Claimants' Notice of Appeal.*

To:

CHARLES WEISER, Esq.,
Clerk, United States District Court,
Southern District of New York.

BIGHAM, ENGLAR, JONES & HOUSTON, Esqs.,
64 Wall Street,
New York City.

LESTER HAND JAYNE, Esq.,
27 William Street,
803 New York City.

KURZMAN & FRANK, Esqs.,
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WILLIAM O'DWYER, Esq.,
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ABRAHAM S. BURSKY, Esq.,
140 Nassau Street,
New York City.

OELAND & KUHN, Esqs.,
115 Broadway,
New York City.

The above appeal is hereby allowed.

Dated, New York, March 10th, 1931.

ROBERT P. PATTERSON,
U. S. D. J.

## Notation that Similar Notices of Appeal are not Printed in Full.

805

The Notice of Appeal of Leola Turner, as administratrix of the Estate of John A. Turner, deceased, and Virginia Sumner, as administratrix of the Estate of Fred Sumner, deceased, Nora McEachin, as administratrix of Estate of Henry A. McEachin, being similar to the Notice of Appeal filed by claimants-appellants Vera Alexander, as administratrix of the Estate of James Alexander, deceased, et al., their reprinting here is dispensed with.

806

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## Assignments of Error.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

807

The claimants:

Vera Alexander, as adm. of Est. of James Alexander, decd.,
Lena Burns, adm. of Est. of Charles Burns, decd.,
Julia Daniels and Mary Slaughter, as adms. of Est. of Samuel Daniels, decd.,

808 *Assignments of Error.*

Margarita De Meza and Felipe Durate, as adms. of Est. of Domingo De Meza, decd.,
Anna Eberle, as adm. of Est. of Frank Eberle, decd.,
Marie Marques, as adm. of Est. of Frank S. Marques, decd.,
Luis E. Feliu, as adm. of Est. of Fernando Martin, decd.,
Celestina Mathias, as adm. of Est. of Adolphus Mathias, decd.,
809 Josefina A. Morales, as adm. of Est. of Carlos Morales, decd.,
Stephen Nemets, as adm. of Est. of George Nemets, decd.,
Adina Victoria Pusey, as adm. of Est. of Uriah Pusey, decd.,
Laura Rawlins, as adm. of Est. of Clifford Rawlins, decd.,
Edith Samuels, as adm. of Est. of John Benjamin Samuels, decd.,
Francisca Gomes Castro and Jose Reyes, as adms. of Est. of John Castro, decd.,
Emerance Hamilton, as adm. of Est. of Joseph
810 Hamilton, decd.,
Annie Belle Wisdom, as adm. of Est. of Nathaniel Wisdom, decd.,
Raymond Boyer, as adm. of Est. of Ernest Boyer, decd.,
Albert E. Kane, as adm. of Est. of David H. Clark, decd.,
Angelina Corriette, as adm. of Est. of Balfour Corriette, decd.,
James Coyle, as adm. of Est. of Thomas Coyle, decd.,

Frank Labiak, as adm. of Est. of Victor Kreminsky, decd.,
Adolfo G. Dominguez, as adm. of Est. of Juan C. Munoz, decd.,
Mario Ortiz, as adm. of Est. of Eladio Ortiz, decd.,
Marion B. Thigpen, as adm. of Est. of Carlie C. Thigpen, decd.,
Dominick Darco, Felipe Durate, Junius Johnson, Bernard Lange and Louis A. Ortiz,

appellants herein, hereby assign error in the de- 812
cision of the United States District Court for the Southern District of New York entered December 17, 1930, and the Findings of Fact and Conclusions of Law entered February 16, 1931, and in the Final Decree entered in the office of the Clerk of said Court herein on or about the 25th day of February, 1931, as follows:

1. In that the District Court rendered a decree dismissing their claims.

2. In that the District Court sustained the petitioner's exceptions to their claims. 813

3. In that the District Court held that the New Jersey Workmen's Compensation Act was applicable to the claimants and determinative of their rights and provided an exclusive remedy.

4. In that the District Court failed to hold that under the authority of Hartford Accident Co. v. Southern Pacific Co., 273 U. S. 207, said claimants are entitled to a complete remedy in this proceeding and this Court is competent to give such remedy.

814 *Assignments of Error.*

5. In that the District Court found contrary to the evidence and the law that there was no waiver by petitioner of its alleged right to confine the claimants to a remedy under the New Jersey Workmen's Compensation Act and that petitioner had never departed from the position that said claimants' rights were to be determined by the New Jersey Workmen's Compensation Bureau and that the petitioner's conduct was not antagonistic to such position.

815 6. In that the District Court failed to find that having invoked the jurisdiction of this Court in this proceeding and having procured an order of this Court which for more than four years enjoined the New Jersey Workmen's Compensation Bureau from hearing or determining any claims arising out of the disaster and having required said claimants to proceed with the proof of their claims in this Court, the petitioner has waived, foregone and lost by laches the right, if such right at any time existed, to confine said claimants to the New Jersey Workmen's Compensation remedies and is estopped from denying the claimants' 816 rights to recover in a forum to which the petitioner has compelled them to resort.

7. In that the District Court failed to hold that by bringing this proceeding in admiralty for a limitation of its liability the petitioner thereby repudiated its alleged contract under the New Jersey Workmen's Compensation Act so as to entitle said claimants to treat such alleged contract as rescinded.

8. In that the District Court held that the claimants had at no time any claims in tort against the

petitioner and failed to hold that the claims arose by reason of the tort and negligence of the petitioner; that the Workmen's Compensation Act of New Jersey, if applicable at all, could only impose a quasi-contractual obligation in respect to such tort, and that the inapplicability of said Compensation Act or, were it applicable, the waiver and repudiation of its provisions in the institution of this proceeding rendered applicable the death statute of New York State, within the territorial waters of which the disaster occurred. 818

9. In that the District Court held that the petitioner's liability to pay compensation under the New Jersey Workmen's Compensation Act arose from a personal contract in respect of which liability could not be limited; that said claimants could have had the limitation dismissed so far as it concerned them and that they are not entitled to recover in this proceeding as are other claimants as against whom the petition has been dismissed, for said petition has not been sustained as to any claim.

10. In that the District Court, although finding 819 that the petitioner's conduct in instituting and maintaining this proceeding and in causing the New Jersey Workmen's Compensation Bureau to be enjoined from hearing or determining any claims arising out of the disaster, was a violation of its contractual obligation under the New Jersey Workmen's Compensation Act, nevertheless failed to hold that by reason of such violation the petitioner should be estopped to claim the benefits of such alleged contractual obligation and the claimants should be entitled to recover in the forum before which the petitioner has cited them.

820 *Assignments of Error.*

11. In that the District Court held that the elements of estoppel were lacking whereas in fact all such elements are present, particularly as the petitioner, instead of the simple, speedy and non-litigated remedy which the New Jersey Workmen's Compensation Act held out, has compelled the claimants to become parties to a litigation in which the petitioner sought limitation of liability, whether by virtue of the Compensation Act or otherwise, a litigation involving trial before the
821 Court, hearings before the commissioner, the necessity of employing counsel and years of delay, and it is wholly impossible to restore said claimants to their original position prior to the institution of this proceeding.

12. In that the District Court failed to hold that having elected to come into admiralty and to obtain the remedial benefits of the Limited Liability Act, a remedy wholly inconsistent with the New Jersey Workmen's Compensation Act, the petitioner is bound by such election.

13. In that the District Court failed to hold that
822 the acts of Congress invoked by the petitioner in its petition contemplated a single proceeding before the District Court, exclusive of any other jurisdiction, and that in view of the laches of petitioner and the prejudice to claimants the District Court abused its discretion, if possessed of such discretion, to refer said claimants to another forum.

14. In that the District Court failed to make awards to said claimants in adequate amounts, and failed to pass on the exceptions of said claimants to the awards made by the commissioner, and the

refusal of the commissioner to make awards in the claims of De Meza, Hamilton and Wisdom.

15. In that the District Court sustained petitioner's exceptions to the claims filed by the aforesaid claimants.

16. In that the District Court overruled the commissioner's report in so far as he held that the New Jersey Workmen's Compensation Act was inapplicable to the claims filed and proved in this proceeding by the aforesaid claimants. 824

ELIZABETH ROBINSON and
LUCIEN V. AXTELL,
Proctors for Claimants-Appellants,
Office & P. O. Address,
15 Moore Street,
Borough of Manhattan,
City of New York.

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**Notation that Similar Assignments of Error are not Printed in Full.** 825

The Assignments of Error filed by Leola Turner, as administratrix of the Estate of John A. Turner, deceased, and Virginia Sumner, as administratrix of the Estate of Fred Sumner, deceased, Nora McEachin, as administratrix of the Estate of Henry A. McEachin, being similar to the Assignments of Error filed by claimants-appellants Vera Alexander, as administratrix of the estate of James Alexander, deceased, et al., their reprinting here is dispensed with.

826 **Petitioner's Notice of Appeal.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," for
827 Limitation of and Exemption from Liability.

Sirs:

PLEASE TAKE NOTICE that the petitioner, Spencer Kellogg & Sons, Inc., hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the decision of this Court and from the final decree entered herein on or about the 25th day of February, 1931, and from each and every part of said decree, except in so far as it provides for the dismissal of certain claims and recites the
828 settlement of certain other claims and enjoins the beginning or prosecution of any action, suit, or other proceeding for any loss, damage or destruction occasioned by or resulting from the sinking of the Motorboat "Linseed King" in the Hudson River on December 20, 1926.

Dated, New York, N. Y., March 19, 1931.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Petitioner,
64 Wall Street,
Borough of Manhattan,
City of New York.

To:

CHARLES WEISER, Esq.,
Clerk, United States District Court,
Southern District of New York.

ABRAHAM S. BURSKY, Esq.,
140 Nassau Street,
New York City.

ELIZABETH ROBINSON and
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15 Moore Street, 830
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27 William Street,
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26 Court Street,
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CHARLES KENNEDY, Esq., 831
233 Broadway,
New York City.

OELAND & KUHN, Esqs.,
115 Broadway,
New York City.

MAX GELLES,
270 Broadway,
New York City.

The above appeal is hereby allowed.

Dated, New York, March 20, 1931.

ROBERT P. PATTERSON,
U. S. D. J.

832 **Petitioner's Assignments of Error.**

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," for
833 Limitation of and Exemption from Liability.

The petitioner, Spencer Kellogg and Sons, Inc., hereby assigns error in the proceedings and decree of the District Court in the above entitled action as follows:

A. GENERAL ASSIGNMENTS OF ERROR.

1. The District Court erred in failing to enter a
834 decree exonerating petitioner from all liability, excepting under the New Jersey Workmen's Compensation Act.

2. The District Court erred in holding that the petitioner was guilty of any negligence in the operation of the "Linseed King."

3. The District Court erred in denying the petitioner the right to limit its liability with respect to any loss, destruction, damage and injury caused by and resulting from the disaster aforesaid under

the provisions of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the Acts amendatory thereof and supplemental thereto. 835

4. The District Court erred in holding that the petitioner had not sustained the burden of proof of showing its lack of privity or knowledge in connection with the sinking of the "Linseed King."

5. The District Court erred in holding that the sinking of the "Linseed King" was with the privity and knowledge of the petitioner. 836

6. The District Court erred in holding that the sinking of the "Linseed King" was with the privity or knowledge of the petitioner, notwithstanding the petitioner had employed a competent master to operated the "Linseed King" and had given him proper instructions as to the operation of the craft.

7. The District Court erred in finding that the petitioner was chargeable with privity or knowledge in connection with the ice conditions in the Hudson River, although the master had definite instructions not to operate the "Linseed King" when there was ice in the river, and the petitioner had no knowledge of the presence of ice in the river. 837

8. The District Court erred in finding that the petitioner or its manager should have anticipated the presence of ice in the river on the date of the disaster.

838 *Petitioner's Assignments of Error.*

9. The District Court erred in holding that there was any fault or negligence in permitting the "Linseed King" to carry the number of men who were actually on board her at the time of the disaster.

10. The District Court erred in holding that the "Linseed King" was overcrowded.

11. The District Court erred in holding that the "Linseed King" was overcrowded with the privity
839 or knowledge of the petitioner.

12. The District Court erred in holding that overcrowding of the "Linseed King" was a cause of the disaster.

13. The District Court erred in holding that the "Linseed King" was undermanned.

14. The District Court erred in holding that the "Linseed King" was undermanned with the privity or knowledge of the petitioner.

840 15. The District Court erred in holding that the petitioner was negligent in failing to have a man detailed to assist the captain of the "Linseed King," although the Court subsequently found that Roberts was in fact assisting the captain on this particular voyage.

16. The District Court erred in holding that the privity or knowledge of the manager of petitioner's Edgewater plant was the privity or knowledge of the petitioner.

17. The District Court erred in holding that the acts of the petitioner's manager in connection with the operation of the "Linseed King" were sufficient to deprive the petitioner of the right to limit its liability, although the petitioner had given the said manager specific and proper instructions with respect to the operation of said craft.

18. The District Court erred in holding that the petitioner could not limit its liability because of its manager's action in permitting the vessel to be 842
run under the conditions prevailing on the date of the disaster, notwithstanding the petitioner had given the manager specific instructions not to run the craft when there was ice in the river.

19. The District Court erred in holding that the petitioner had constructive knowledge that there was or might be ice in the Hudson River on December 20, 1926, and that this amounted to privity or knowledge of the fact that the master of the boat would take on passengers and navigate in ice, contrary to specific instructions which he had received from the petitioner. 843

20. The District Court erred in that, although the Court found that no ice was perceived in the river at the commencement of the voyage, and that the negligence consisted in starting the return trip under existing conditions, the Court, nevertheless, held that the return trip under existing conditions was made with the privity or knowledge of the petitioner.

832 *Petitioner's Assignments of Error.*

B. ASSIGNMENTS OF ERROR RELATING TO CLAIMS FILED BY OR ON BEHALF OF THE FOLLOWING PERSONS:

1. Roy Amlaw,
2. Joseph Bashett,
3. David Hicks,
4. Andrew S. Murphy,
5. Paul Saul,
6. George Sims,
7. Thomas Connolly,

833

8. Joseph Dobransky,
9. James Heap,
10. John Kakos,
11. Bert Ramsland,
12. Carl Bremer,
13. Aaron Cooper,
14. Harry Gold,
15. William Ice,
16. Fred Ludwig,
17. Padro Mitchell,
18. Robert Proven,
19. John Sullivan,
20. Darnelly Barker.

21. The District Court erred in that it failed to hold that these men who had been accepted for employment by petitioner's duly authorized representatives on Saturday morning and were reporting for work on Monday morning, pursuant to instructions received on Saturday and Sunday, were employees within the meaning of the New Jersey Workmen's Compensation Act.

834 22. The District Court erred in that although the Special Commissioner specifically found that these men had been employed, the District Court sustained the claimant's exceptions and overruled the Commissioner's report in this respect.

23. The District Court erred in holding that these persons were not employees of the petitioner within the meaning of the New Jersey Workmen's Compensation Act, Laws of 1911, Chapter 95, as amended, or if they were, the work for which they were employed was the unloading of a ship, which would be maritime work and therefore prevent the

application of the New Jersey Workmen's Compensation Law.

24. The District Court erred in failing to hold that although part of the work of these men might have been maritime in its nature, the application of the State Compensation Law would not prejudice the harmony and uniformity of admiralty law.

25. The District Court erred in that although it found that these men were returning to the petitioner's plant, pursuant to instructions of the petitioner given at the time of their being accepted by the petitioner's Employment Manager, the Court failed to find that the death or injury of these persons occurred in the course of their employment. 848

26. The District Court erred in failing to find that the employment of these men had begun prior to the disaster.

27. The District Court erred in finding in effect that these men, at the time of their death, or injury, were engaged in their own pursuits.

28. The District Court erred in failing to distinguish between work and employment. 849

29. The District Court erred in failing to find that although the work which these men had been engaged to perform had not yet been entered upon, their employment had begun prior to the disaster.

30. The District Court erred in failing to dismiss the claims of these persons and to hold that their sole remedy is under the New Jersey State Workmen's Compensation Law.

31. The District Court erred in finding that as to these men the status of employer and employee

850 *Petitioner's Assignments of Error.*

had not begun or did not exist at the time of the accident.

32. The District Court erred in holding that the employment of these men was maritime.

33. The District Court erred in holding that the work of these men was the unloading of a ship.

34. The District Court erred in holding the New Jersey Workmen's Compensation Act did not apply to these men because of the maritime nature of
851 their employment, although it was wholly uncertain at the time of the disaster whether these men would have worked on a vessel or on land.

35. The District Court erred in holding that the New Jersey Workmen's Compensation Act did not apply to these men, because of the maritime nature of their employment, although at least a part of the work of all of these men would have been on shore and they were not performing any maritime work at the time of the disaster.

C. Assignment Relating to the Claim Filed on
852 Behalf of Alfred Roberts, Deceased.

36. The District Court erred in that, although the Court held that the petitioner was negligent in failing to have a man assist the captain of the "Linseed King," the Court subsequently held that Alfred Roberts was assisting the captain of the "Linseed King" and permitted a recovery in the Roberts case, on the theory that the work in which Roberts was engaged at the time was maritime in its nature.

Bigham, Englar, Jones & Houston,
Proctors for Petitioner,
64 Wall Street,
New York, N. Y.